No. 10287

5

United States
Circuit Court of Appeals
For the Ninth Circuit.

UNDERWRITING MEMBERS OF LLOYD'S IN LLOYD'S POLICY NUMBER 52342, and STANLEY GRAHAM BEER, individually and as representative of the Underwriting Members of Lloyd's in Lloyd's Policy Number 52342,

Appellants,

vs.

CALIFORNIA FRUIT GROWERS EXCHANGE, a corporation, and UNITED STATES FIDELITY AND GUARANTY COMPANY, a corporation,

Appellees.

Transcript of Record

Upon Appeal from the District Court of the United States for the Southern District of California, Central Division

ROTARY COLORPRINT, 590 FOLSOM ST., SAN FRANCISCO

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INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

Index

Index Page

NAMES AND ADDRESSES OF ATTORNEYS

For Appellants:

CHARLES E. R. FULCHER, Esq.,
823 Title Guarantee Bldg.,
411 W. 5th Street
Los Angeles, Calif.

For Appellee United States Fidelity and Guaranty Company:

Messrs. MILLS & WOOD
EDWARD C. MILLS, Esq.,
811 C. C. Chapman Bldg.,
Los Angeles, Calif.

For Appellee California Fruit Growers Exchange:

Messrs. FARRAND & FARRAND,
ROSS C. FISHER, Esq.,
1028 Pacific Southwest Bldg.,
Los Angeles, Calif. [1*]

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*Page numbering appearing at foot of page of original certified Transcript of Record.

In the District Court of the United States for the Southern District of California
Central Division

Civil No. 1447-H

CALIFORNIA FRUIT GROWERS EXCHANGE, a corporation,

Plaintiff,

vs.

UNITED STATES FIDELITY AND GUARANTY COMPANY, a corporation; UNDERWRITING MEMBERS OF LLOYD'S IN LLOYD'S POLICY NUMBER 52342, and STANLEY GRAHAM BEER, individually and as representative of the Underwriting Members of Lloyd's in Lloyd's Policy Number 52342,

Defendants.

COMPLAINT ON FIDELITY BONDS

Comes now the plaintiff above named and for cause of action against the above named defendants, alleges as follows:

I.

At all times herein mentioned plaintiff California Fruit Growers Exchange was, and now is, a non-profit, cooperative, agricultural marketing corporation, organized and existing under the cooperative marketing laws of the State of California and with

its principal place of business in Los Angeles, Los Angeles County, California, and is a citizen of that state. [2]

II.

Defendant United States Fidelity and Guaranty Company at all times herein mentioned was, and now is, a corporation organized and existing under the laws of the State of Maryland and a citizen of that state, and duly authorized to do and doing business in the State of California and in the Southern District of California at Los Angeles, California. As a part of its said business said corporation was and is engaged in executing and becoming surety under fidelity bonds.

III.

The defendant Underwriting Members of Lloyd's in Lloyd's Policy Number 52342 are of the persons whose names are signed to the said policy, a photostatic copy of which is annexed hereto and made a part hereof as exhibit "C". As plaintiff is informed and believes and therefore alleges, all of the said defendant Underwriting Members of Lloyd's are non-residents of the State of California and are residents of England and citizens of Great Britain.

IV.

Defendant Stanley Graham Beer is a resident of England and a citizen of Great Britain and is one of the Underwriting Members of Lloyd's in Lloyd's policy Number 52342, Exhibit "C" hereto. Because they are so numerous as to make it impracticable

to bring before the Court all of the said Underwriting Members of Lloyd's, the said Stanley Graham Beer is sued herein individually and as the representative of all of the said Underwriting Members of Lloyd's, who have likewise agreed with plaintiff that the said Stanley Graham Beer may be sued in an action upon the said Policy Number 52342 as the representative of all of them and that any [3] proceedings taken and any judgment rendered in such action will be binding for and against all of them in the same manner and to the same extent as if they were all individually named as parties defendant and appeared in the action.

V.

The matter in controversy in this suit, exclusive of interest and costs, exceeds the sum of $3,000.00, and is the sum of $25,000.00.

VI.

On or about October 23, 1912 defendant United States Fidelity and Guaranty Company executed and delivered to plaintiff a primary fidelity bond or contract. Modifications of the said contract were made from time to time in writing by signed endorsements attached thereto. A copy of said bond or contract as modified is attached hereto as Exhibit "A" and made a part hereof by reference.

By the said primary fidelity bond or contract as so modified, defendant United States Fidelity and Guaranty Company guaranteed to pay to plaintiff

any pecuniary loss, including that for which plaintiff was responsible, occasioned by any acts of fraud, dishonesty, forgery, theft, larceny, embezzlement, wrongful abstraction or misapplication, or other criminal act of any of the employees of plaintiff listed thereunder, directly or through connivance, in any position and at any location in plaintiff's employ, and during the period commencing upon the date each such employee was listed thereunder and continuing until the termination of the suretyship as therein provided. Said primary fidelity bond or contract has ever since continued to be and now is in full force and effect. [4]

VII.

On November 1, 1936, at Los Angeles, California, plaintiff procured from the defendant Underwriting Members of Lloyd's, through Swett & Crawford, their duly authorized agents, excess fidelity blanket insurance in the amount of $25,000.00, the purpose and effect of which was to supplement the primary fidelity bond hereinabove referred to by extending the amount of the coverage over and above the maximum liability under the said primary bond, to and not exceeding the sum of $25,000.00. Said insurance was evidenced by a certificate of insurance, Number 6167, executed and delivered to plaintiff by said Swett & Crawford on behalf of said Underwriting Members of Lloyd's, at Los Angeles, California November 1, 1936. A photostatic copy of said certificate of insurance, together with the endorse-

ments pasted thereon, is annexed hereto as Exhibit "B" and made a part hereof. On January 26, 1937, pursuant to the said certificate of insurance the said defendant Underwriting Members of Lloyd's executed in London, under the seal of Lloyd's Policy Signing Office, and thereafter delivered to plaintiff in Los Angeles, through their said duly authorized agents, Swett & Crawford, the excess fidelity blanket policy of insurance contemplated and provided for by the said certificate of insurance. A photostatic copy of said excess fidelity blanket policy, together with the endorsements thereon is annexed hereto as Exhibit "C" and made a part hereof.

VIII.

On November 1, 1936 and during the period covered by said excess blanket fidelity insurance of defendant Underwriting Members of Lloyd's under said certificate and policy, Exhibits "B" and "C" hereto, one of plaintiff's employees, to-wit, Floyd E. Jones, was listed by plaintiff under the said primary fidelity bond, Exhibit "A" hereto, with a maximum liability as to the said [5] employee of $1,000.00 under said primary bond.

IX.

On November 1, 1937 and prior to the expiration of the Lloyd's excess blanket fidelity insurance hereinabove described, defendant United States Fidelity and Guaranty Company executed and delivered to plaintiff an excess commercial blanket bond No. 02-

308-37. On November 15, 1937 said excess commercial blanket bond was modified by three separate written riders executed by said defendant United States Fidelity and Guaranty Company and attached to the said excess commercial blanket bond No. 02-308-37. Said excess commercial blanket bond was also modified by written rider attached thereto and executed by said defendant United States Fidelity and Guaranty Company on January 12, 1938. A photostatic copy of the said excess commercial blanket bond and of the said riders modifying the same is annexed hereto as Exhibit "D" and made a part hereof by reference. The purpose and effect of said excess commercial blanket bond as so modified was to insure as therein provided, the fidelity of plaintiff's employees, including said Jones, in the maximum sum of $25,000.00 over and above the amount of the said primary bond, and to cover, among other things, as therein provided, any misconduct of such employees during the year 1937 for which a right of recovery against said defendant Underwriting Members of Lloyd's might be lost because of non-discovery and lapse of time.

X.

During the period that the acts of the said Jones were covered by the above described fidelity insurance he was employed by plaintiff as a loose fruit salesman. Among other duties as such salesman it was his duty to collect and account for to plaintiff the sale price of fruit sold by him. Said Jones did

during said [6] period collect and receive proceeds of sales of fruit sold by him and did account for portions of the money so received by him. But in various ways, as by making no record or by falsifying the records of such sales made by him and particularly by changing the record of the weight of fruit sold, said Jones was enabled to and did deceive plantiff as to the amount of fruit sold and the amount of money collected therefor from time to time, and thereby was enabled to and did fraudulently retain and convert to his own use part of the moneys received by him on such sales. Such misconduct of the said Jones began during the year 1937 after May 1, 1937, and continued thereafter from time to time during that year. The amount of such defalcations by the said Jones during the year 1937 prior to November 1, 1937 were in excess of $26,000.00.

XI.

On or about July 31, 1940 plaintiff discovered for the first time that said Floyd E. Jones might not have accounted for all of the moneys received by him on plaintiff's behalf for fruit sold by him, and immediately notified defendants of that fact in the manner provided in said contracts of insurance. Thereafter on or about August 15, 1940, as soon as the fact of such defalcations had been determined, plaintiff so notified defendants in writing. Because of the time required for investigation and audit to ascertain the facts and the extent of the defalcations of said Jones, defendants in writing extended the

time for filing proof of loss to November 15, 1940. Plaintiff began an investigation of the possible defalcations of the said Floyd E. Jones and through an audit by certified public accountants of all of his transactions as such loose fruit salesman, discovered on or about October 28, 1940, that during the year 1937, after May 1 and before November 1, said Jones, in his capacity of loose fruit salesman, had received [7] in payment for friut sold by him on behalf of plaintiff, and had converted to his own use and failed to account for to plaintiff sums aggregating in excess of $26,000.00.

XII.

On or before October 30, 1940 plaintiff in writing notified defendants of the nature and amount of the said defalcations of the said Jones during the year 1937 and filed with defendants affirmative proofs of loss, itemized and duly sworn to, including copies of the audit hereinabove mentioned.

XIII.

Plaintiff duly performed all of the conditions on its part to be performed under said primary and excess fidelity insurance contracts.

XIV.

On or about November 20, 1940 defendant United States Fidelity and Guaranty Company paid to plaintiff on account of the said defalcations of the said Floyd E. Jones during the year 1937 between

May 1 and November 1, the total sum of $1,000.00 as the maximum amount of coverage as to the said defalcations under the said primary fidelity bond.

XV.

Prior to the filing of this complaint defendant Underwriting Members of Lloyd's notified plaintiff that they would not pay plaintiff anything under the said excess blanket fidelity Policy Number 52342 on account of any defalcations of the said Floyd E. Jones for the alleged reason that liability for such defalcations rested upon defendant United States Fidelity and Guaranty Company under its said excess commercial blanket bond. [8]

XVI.

Prior to the filing of this complaint defendant United States Fidelity and Guaranty Company notified plaintiff that it would not pay to plaintiff anything in addition to the amount paid under its said primary fidelity bond, on account of the said defalcations of the said Floyd E. Jones during the year 1937, for the alleged reason that said defalcations were covered by the said Lloyd's excess blanket fidelity policy and were therefore not within the terms and conditions of said excess commercial blanket bond of United States Fidelity and Guaranty Company.

XVII.

By reason of the foregoing a controversy has arisen between plaintiff and the said defendants,

and between the said defendants themselves, as to whether liability to plaintiff for the said defalcations of the said Floyd E. Jones during the year 1937 as aforesaid between May 1 and November 1 rests upon the said defendant Underwriting Members of Lloyd's or upon the said defendant United States Fidelity and Guaranty Company. The defendant United States Fidelity and Guaranty Company contends that by the terms of its said excess commercial blanket bond it is not obligated to pay plaintiff for losses suffered by reason of any defalcations of plaintiff's employees for which plaintiff is entitled to be paid under the provisions of the said Lloyd's excess blanket fidelity policy; and said United States Fidelity and Guaranty Company further contends that the said defalcations in the year 1937 between May 1 and November 1 are covered by the said Lloyd's policy. Said defendant Underwriting Members of Lloyd's on the other hand contend that their said policy does not cover the said defalcations because of the following clause contained in said Lloyd's policy, to wit: [9]

> "5. Warranted Free of All Claim for losses occurring subsequent to the expiry date of this Policy and for losses not discovered during its currency, with the understanding that in event of non-renewal the Assured shall have a period equal to that provided by the Discovery Clause of the aforesaid Primary Bonds (but not exceeding three years) in which to discover losses claimable under this Insurance."

In this connection said defendant Underwriters contend that within the meaning of said quoted warranty there is no "discovery clause" in the said primary bond and that therefore their liability under the said warranty above quoted ceased with the "expiry date" of the said Lloyd's policy, to wit, November 1, 1937 noon, Pacific Standard Time.

Defendant United States Fidelity and Guaranty Company in this connection contends that the term "discovery clause" as used in the above quoted warranty was not intended to be and is not limited to a "specific clause" in the said primary bond providing for discovery but was intended to and does mean merely the period of time within which, under the said primary bond, losses must be discovered in order to be recoverable thereunder; that in the absence of specific limitation, there is no definite time limit for discovery under said primary bond.

XVIII.

Plaintiff takes no position upon the controversy hereinabove described except merely that under one or the other of said excess fidelity contracts hereinabove mentioned it is entitled to be paid for the losses suffered by reason of the said defalcations of the said Floyd E. Jones during the year 1937 between May 1 and November 1, up to the amount of $25,000.00, being the maximum amount [10] of excess liability under each of the said excess fidelity contracts.

Wherefore plaintiff prays that the court determine the controversy hereinabove set forth and whether defendant Underwriting Members of Lloyd's or the defendant United States Fidelity and Guaranty Company, is liable to plaintiff under their said respective excess fidelity contracts, and that the court thereupon render judgment in favor of the plaintiff and against the defendant or defendants so determined to be liable, in the sum of $25,000.00 with interest thereon at the rate of seven per cent per annum from October 30, 1940, together with costs and disbursements herein; and plaintiff further prays for all relief that may be just and proper.

GEORGE E. FARRAND
EDWARD W. TUTTLE
EDWARD E. TUTTLE
Attorneys for Plaintiff
215 West Sixth Street
Los Angeles, California. [11]

EXHIBIT "A"

603-12

United States Fidelity and Guaranty Company, Home Office: Baltimore, Md.

The United States Fidelity and Guaranty Company as Surety, for a premium based upon an annual rate per one hundred dollars of suretyship, hereby guarantees to pay to California Fruit Growers Exchange the Employer, such pecuniary loss as the Em-

Exhibit "A"—(Continued)

ployer shall sustain (limited only by the provisos hereof)
of Money, Bonds, Debentures, Scrips, Certificates, Warrants, Transfers, Coupons, Bills of
Exchange, Promissory Notes, Checks, Bank Notes, Currency Merchandise or Other Property,
including that for which Employer is responsible, occasioned by any act or acts of Fraud, Dishonesty,
Forgery, Theft, Larceny, Embezzlement, Wrongful Abstraction or Misapplication or Misap-
propriation or Other Criminal Act by any of the employes listed hereunder directly or through
connivance in any position and at any location in the Employer's employ, and during the period
commencing upon the date each is listed hereunder and continuing until the termination of this suretyship.

Provisos:

1. On application, other employes may be added hereto from time to time by the Surety issuing
an acceptance in writing, stating the amount and the date added, and this suretyship on any
employe may be increased or decreased by the Surety without impairing the continuity hereof, pro-
vided the Surety's aggregate liability under all

Exhibit "A"—(Continued)

its bonds and [12] engagements on any one employe shall not exceed the largest bond or engagement on such employe.

2. In the event of recovery of any loss, or portion thereof, from other than suretyship, the Surety and Employer shall share therein in the same proportion that their respective losses bear to the total loss.

3. The Employer shall deliver notice of any default hereof to the Surety at its Home Office within ten days after the discovery of such default. All claims shall be submitted separately as to each employe, showing the items and dates of the loses and delivered in writing to the Surety at its Home Office within three months after their discovery. The Surety shall have two months after claim has been presented in which to verify and pay same, during which time no legal proceeding shall be brought against the Surety as to that claim, nor at all as to that claim after the expiration of twelve months from its date.

4. This Suretyship as to any or all of the employes shall only terminate by:——

1. The Employer giving notice in writing to the Surety specifying the date of termination.

Exhibit "A"—(Continued)

2. The Surety giving thirty days' notice in writing to the Employer.

(The Surety to refund unearned premium in the above cases.)

3. The non-payment of premium for a period of three months beyond date due; all premiums being due in advance.

Except that as to any employe, upon discovery of loss through that employe. [13]

In Testimony Whereof, the United States Fidelity and Guaranty Company has hereunto set its seal. Witness the hand of its President, attested by its Assistant Secretary, on this 23rd day of October, 1912.

UNITED STATES FIDELITY AND GUARANTY COMPANY,
JOHN R. BLAND
President.

Attest:
[Seal] WM. F. MORGAN
Assistant Secretary.

Endorsement

Baltimore, Md., December 19, 1913

The United States Fidelity & Guaranty Company as Surety under schedule bond #603-12, covering certain specified employees of the California Fruit Growers Exchange, hereby consents that its liability

Exhibit "A"—(Continued)

under said bond shall extend in addition to the California Fruit Growers Exchange to the California Fruit Exchange of Sacramento, California and W. H. Garvin of Delta, Colorado and Salt Lake City.

UNITED STATES FIDELITY & GUARANTY COMPANY.

[Seal] WM. F. MORGAN
Asst. Secretary.

Endorsement

The United States Fidelity and Guaranty Company hereby agrees to guarantee the fidelity of any party or parties in the amount and position applied for in favor of the California Fruit Growers Exchange for a term of thirty days, subject to all of the covenants and conditions set forth and expressed in the schedule bond No. 603-12, of said Company, dating in each instance from the date of their employment, and terminating otherwise than by limitation immediately on the issuance [14] of the properly executed acceptance notice upon receipt of application at the office of the United States Fidelity and Guaranty Company at Cleveland, Ohio, or on notice of declination.

UNITED STATES FIDELITY AND GUARANTY COMPANY,

[Seal] H. L. PRICE
Assistant Secretary.

November 6, 1915.

Exhibit "A"—(Continued)

Endorsement

The United States Fidelity & Guaranty Company as Surety under Schedule Bond #603-12, covering certain specified employes of the California Fruit Growers Exchange, hereby consents that its liability under said bond shall extend in addition to the California Fruit Growers Exchange to the Vegetable Growers Union, as interest may appear; subject to all the covenants and conditions set forth and expressed in said schedule bond heretofore issued.

UNITED STATES FIDELITY
& GUARANTY CO.

[Seal] J. N. RICHARDSON
Assistant Secretary.

November 2, 1917.

Counter signed:

UNITED STATES FIDELITY
& GUARANTY COMPANY

By CARL E. ENNIS
Attorney in fact.

Endorsement

It is understood and agreed that this bond shall be extended to cover the interest of Blessing Electric and Manufacturing Company as its interest may appear. All loss hereunder shall be adjusted with and payable to California Fruit Growers Exchange.

Attached to and *form* a part of Schedule Bond S-603-12 California Fruit Growers Exchange

Exhibit "A"—(Continued)

Dated at Los Angeles, California, November 30th, 1921. [15]

UNITED STATES FIDELITY
& GUARANTY COMPANY

[Seal] By J. ST. PAUL WHITE
Its Attorney in Fact.

Endorsement

California Fruit Growers Exchange—S-603-12

It is understood and agreed that Paragraph #2 (line 17 and 18) of the bond to which this rider is attached shall be eliminated and the following substituted in lieu thereof.

In the event that the loss of the employer on any one employe exceeds the amount of insurance on said employe, the Surety shall not be entitled to participate in any salvage on account of said employee until the employer is fully reimbursed.

Attached to and forming a part of United States Fidelity & Guaranty Company schedule bond S-602-12, dated October 23rd, 1912.

UNITED STATES FIDELITY
& GUARANTY COMPANY

[Seal] E. A. CASEBEER
Attorney-in-Fact.

Endorsement

The United States Fidelity & Guaranty Company, hereby agrees to assume liability without notice, on any employe, new or old, occupying, either permanently or temporarily, any position shown in the

Exhibit "A"—(Continued)

schedule or added thereto, in the amount set opposite said position, for the first ninety (90) days of occupancy, which coverage is to terminate by the expiration of the ninety (90) day period, or upon receipt of application and the Insurer executing its written acceptance adding such employe.

The insurer agrees to assume liability without notice, on any employe, new or old, occupying any new position created, other than those indicated in schedule list or added thereto, in the sum of Ten Thousand ($10,000.00) Dollars, for the first ninety (90) days of [16] occupancy following its creation, which coverage is to terminate by the expiration of the ninety day period, or upon receipt of application and the Insurer executing its written acceptance adding such employe.

Attached to and forming part of Schedule Fidelity Bond dated October 23rd, 1912, executed by United States Fidelity & Guaranty Company as Surety, in favor of California Fruit Growers Exchange, said Bond being numbered 603-12.

UNITED STATES FIDELITY AND GUARANTY COMPANY,

[Seal] By J. ST. PAUL WHITE
Attorney-in-Fact.

Dated at Los Angeles, Calif.—May 23, 1925.

Exhibit "A"—(Continued)

Rider to Be Attached to and Form a Part of
Fidelity Bond No. 4-03-62-12
Issued by
United States Fidelity and Guaranty Company
and in favor of

California Fruit Growers Exchange and/or Blessing Electric & Manufacturing Company and/or California Fruit Exchange of Sacramento and/or The Exchange Orange Products Company and/or Exchange Lemon Products Company as their interests may appear.

The provisions of the bond to which this Rider is attached are hereby amended to the effect that all notices of claim and statements of loss and all other negotiations with the Surety regarding any matter arising under said bond shall be forwarded to or had with the Surety's Branch Office at Los Angeles, California, instead of the Surety's Home Office at Baltimore, Maryland.

This Rider shall be effective from and after the date hereof.

Signed, sealed and dated this 6th day of February, 1930.

UNITED STATES FIDELITY AND GUARANTY COMPANY

[Seal] By J. ST. PAUL WHITE
Attorney-in-Fact. [17]

Exhibit "A"—(Continued)

Endorsement

It is hereby understood and agreed that, notwithstanding any provision to the contrary of the bond to which this rider is attached, the surety will not claim salvage nor will it require the employer to apply as salvage or in reduction of any loss or claim under said bond, any payments of premium or of income, dividends, loan proceeds, cash values, interest, or any other moneys accruing or received on account of the insurance plan for employees known as the Sunkist Provident Plan; that insofar as the rights of the surety under said bond are concerned no claim for loss arising under said bond shall in any way be reduced or otherwise affected by the operation or existence of the said Sunkist Provident Plan, or any payments of premium or of income, dividends, loan proceeds, cash values, interest, or any other moneys accruing or received on account thereof.

Attached to and forming part of fidelity schedule bond #4-03-62-12, of United States Fidelity and Guaranty Company, as Surety, in favor of California Fruit Growers Exchange, et al, as Employer, dated November 1st, 1912.

Dated at Los Angeles, California, this 15th day of May, 1930.

UNITED STATES FIDELITY AND GUARANTY COMPANY

[Seal] By J. ST. PAUL WHITE
Attorney-in-Fact.

Exhibit "A"—(Continued)

State of California
County of Los Angeles—ss.

On this Fifteenth day of May in the year one thousand nine hundred and Thirty, before me, H. M. Beck, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared J. St. Paul White, known to me to be the duly authorized Attorney-in-fact of the United States Fidelity and Guaranty Company, and the same person whose name is subscribed to the within instrument as the Attorney-in-fact of said Company and the said J. St. Paul White duly acknowledged to me that he subscribed the name of the United States [18] Fidelity and Guaranty Company thereto as Surety and his own name as Attorney-in-fact.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal] H. M. BECK.
Notary Public in and for Los Angeles County, State of California.

Endorsement

The United States Fidelity and Guaranty Company, as Surety under Fidelity Schedule Bond #4-03-62-12 issued effective the 1st day of November, 1912, in favor California Fruit Growers Exchange, et al hereby amends said bond by the addition of the following clause:

Exhibit "A"—(Continued)

"In case a loss is alleged to have been caused by the fraud or dishonesty of one or more of a group of Employees, all of whom are covered under the attached bond, and the Employer shall be unable to designate the specific employee or employees causing such loss, the Employer shall nevertheless have the benefit of the attached bond, provided that the evidence submitted reasonably establishes that the loss was in fact due to the fraud or dishonesty of one or more of the said Employees of the said group, and provided further that the liability of the Surety for any such loss shall not exceed in the aggregate, the average of the respective amounts of suretyship set opposite the names of the Employes of said group."

This amendment to be effective the 20th day of August, 1931, and subject to all other terms and conditions of said bond not inconsistent therewith.

Signed, Sealed and Dated this 20th day of August, 1931.

UNITED STATES FIDELITY AND GUARANTY COMPANY

[Seal] WM. A. SEHLHORST
Assistant Secretary.

Accepted By:——

CALIFORNIA FRUIT GROWERS EXCHANGE, et al

B. B. GREGORY. [19]

Exhibit "A"—(Continued)

Rider

The United States Fidelity and Guaranty Company, as Surety under Fidelity Schedule Bond No. 14815-03-62-12 issued effective the 1st day of November, 1912 in favor of California Fruit Growers Exchange, et al hereby amends said bond as follows:

1. By substituting the word "fifteen" for the word "ten" in line numbered 20.

2. By substituting the word "fifteen" for the word "twelve" in line numbered 25.

The attached bond shall be subject to all its terms, conditions and limitations except as herein expressly modified.

This rider shall be effective as of the 10th day of December, 1940.

Signed, sealed and dated this 10th day of December, 1940.

UNITED STATES FIDELITY AND GUARANTY COMPANY

[Seal] J. ST. PAUL WHITE
Attorney-in-Fact.

Accepted By:

CALIFORNIA FRUIT GROWERS EXCHANGE for itself and all others named as Insured in this bond.

By R. S. HAYSLIP. [20]

EXHIBIT "B"

No. 6167

CERTIFICATE OF INSURANCE

This is to Certify that the undersigned have procured insurance as hereinafter specified from

UNDERWRITER'S AT LLOYD'S, London Through Swett & Crawford, 100 Sansome Street, San Francisco, California, and Sedgwick, Collins & Company, Ltd., 7 Gracechurch Street, London, E. C. 3. Subject to the terms and conditions of Lloyd's Excess Fidelity Blanket—(M.W.D. American Form) Policy in favor of California Fruit Growers Exchange address: Los Angeles, California in the amount of Twenty-Five Thousand and no/100 Dollars during the period commencing with the 1st of November, 1936 and ending with the 1st of November, 1937, both days at noon on Excess Blanket Fidelity in the amount of $25,-000.00 over and above Primary Limit of approximately $972,000.00 on United States Fidelity and Guaranty Company Bond No. 14815-03-62-12.

Amount	Rate	Premium
$25,000.—		$901.00
3% State Tax		$ 27.03
Policy Fee		$ .25
		$928.28

It is specifically understood that the names of the insurers hereunder are on file in the office of

Sedgwick, Collins & Co., Ltd., 7 Gracechurch Street, London, E. C. 3, and will be one file in the office of Swett & Crawford, upon being forwarded to them by Sedgwick, Collins & Co., Ltd.

Loss or damage to the property insured occasioned by war, invasion, hostilities, acts of foreign enemies, civil war, rebellion, insurrection, military or usurped power or martial law or confiscation by order of any Government or public authority not covered.

Insurance may be cancelled at any time by Swett & Crawford, by sending by mail to last known address of Assured five days' written notice of their desire to cancel the same.

It is understood that "noon" refers to standard time at the place of location of risks assured.

This document is intended for use as evidence that insurance described above has been effected, against which underwriters' certificate or policy will be duly issued and conditions of policy issued by Underwriters to supersede conditions on this certificate. Immediate advice must be given of any discrepancies, inaccuracies or necessary changes. Original

Dated at Los Angeles U.S.A., this 1st of November, 1936

SWETT & CRAWFORD,
By J. C. SPENCER
V P [21]

Excess Fidelity Blanket—
(M. W. D. American Form)

1. This Policy is to indemnify the Assured against all such direct loss as the Assured may sustain by reason of the dishonesty of any employees in their employment who are bonded under a Bond or Bonds (hereinafter called Primary Bonds) issued by an approved Insurance Company, subject to the Conditions hereinafter contained.

2. It is understood and agreed that such employees are bonded under the aforesaid Primary Bonds for a total aggregate amount of approximately $972,000.00 and that this policy of Excess Insurance only covers such portion of the ultimate net loss sustained by the Assured in respect of defalcations committed by any such employee subsequent to the 1st day of November, 1935 as shall be in excess of the amount for which such employee is bonded under the said Primary Bonds, provided always that Underwriters' liability in respect of any number of losses shall in no event exceed the sum of $25,000.00 in the aggregate.

3. It is a condition of this Policy that the Assured shall not reduce the amount for which any employee is bonded under the said Primary Bonds without the consent of the Underwriters hereto; that employees engaged or promoted to fill the positions held by employees leaving the employment of the Assured shall be bonded for the same

amounts as their predecessors, and that any new employee additional to the total number employed at the inception of this Policy shall be bonded for a sum not less than the amount for which other employees engaged in the same class or grade of employment are bonded.

4. It is further understood and agreed that this excess insurance is subject to all the terms and conditions of the said Primary Bonds insofar as the same do not conflict with the terms and conditions herein contained, and it is a condition of this Policy that in event of the Underwriters acting as Surety under the said Primary Bonds withdrawing or cancelling their guarantee in respect of any of the employees for any reason the Underwriters hereto shall be automatically relieved of their obligations hereby undertaken as regards the acts of any such employee or employees subsequent to the date of such withdrawal or cancellation.

5. Warranted Free of All Claim for losses occurring subsequent to the expiry date of this Policy and for losses not discovered during its currency, with the understanding that in event of non-renewal the Assured shall have a period equal to that provided by the Discovery Clause of the aforesaid Primary Bonds (but not exceeding three years) in which to discover losses claimable under this insurance.

6. This Policy is subject to the same cancelling clause as that appearing in the said Primary Bonds.

7. This Insurance shall automatically embrace any employee bonded under the Primary Bonds, the Assured undertaking to render on expiry hereof a return of additions and cancellations occurring during the currency of this Policy whereupon the premium shall be adjusted at Forty (40) per cent of the Primary Premium.

Attached to and made part of Certificate No. 6167.

Dated November 1st, 1936.

SWETT & CRAWFORD
By J. C. SPENCER
V P [22]

Endorsement

It is understood and agreed that Paragraph No. 3 is amended to read as follows:

It is a condition of this policy that the Assured shall not reduce the amount for which any position is covered under the said Primary Bond without the consent of the Underwriters hereto. It being understood and permitted that the Assured may reduce the Bond on any employee when he is transferred to a position covered in a smaller amount; that employees engaged or promoted to fill the positions held by employees leaving the employment of the Assured shall be bonded for the same amounts as their predecessors, and that any new employee additional to the total number employed

at the inception of this Policy shall be bonded for a sum not less than the amount for which other employees engaged in the same class or grade of employment are bonded. It being understood and permitted that the Assured may regulate the amounts of bonds at locations according to the volume of business transacted.

All Other Terms and Conditions Remaining Unchanged.

Attached to and forming part of Certificate No. 6167 of Underwriters at Lloyd's, London

Issued to California Fruit Growers Exchange

Dated November 1st, 1936.

SWETT & CRAWFORD
By J. C. SPENCER
V P

Endorsement

It is hereby understood and agreed that, notwithstanding any provision to the contrary of the policy to which this rider is attached, the Underwriters will not claim salvage nor will they require the employer to apply as salvage or in reduction of any loss or claim under this policy, any payments of premium or of income, dividends, loan preceeds, cash values, interest, or any other moneys accruing or received, on account of the insurance plan for employees, known as the Sunkist Provident Plan: that insofar as the rights of the Underwriters under this policy are concerned, no claim

for loss arising under this policy shall in any way be reduced or otherwise affected by the operation or existence of the said Sunkist Provident Plan, or any payments of premium or of income, dividends, loan proceeds, cash values, interest, or any other moneys accruing or received on account thereof.

All Other Terms and Conditions Remaining Unchanged.

Attached to and forming part of Certificate No. 6167 of Underwriters at Lloyd's, London

Issued to California Fruit Growers Exchange.

Dated November 1st, 1936.

SWETT & CRAWFORD
By J. C. SPENCER
V P [23]

Endorsement

Notwithstanding Anything Contained Herein to the contrary it is hereby understood and agreed that the name of the Assured shall read:—

California Fruit Growers Exchange and/or
Blessing Electric & Manufacturing Company and/or
California Fruit Exchange of Sacramento and/or
The Exchange Orange Products Company and/or
Exchange Lemon Products Company
as their interests may appear.

All Other Terms and Conditions Remaining Unchanged.

Attached to and forming part of Certificate No. 6167 of Underwriters at Lloyd's, London

Issued to California Fruit Growers Exchange

Dated November 1st, 1936

SWETT & CRAWFORD
By J. C. SPENCER
V P

Endorsement

It is understood and agreed that loss hereunder, if any, shall be adjustable with, recoverable by and payable to—

California Fruit Growers Exchange

and any notice or other communication required by this Policy or in connection therewith shall be deemed sufficient if sent by or received by California Fruit Growers Exchange, as the case may be.

All Other Terms and Conditions Remaining Unchanged.

Attached to and forming part of Certificate No. 6167 of Underwriters at Lloyd's, London

Issued to California Fruit Growers Exchange

Dated November 1st, 1936

SWETT & CRAWFORD
By J. C. SPENCER
V P [24]

EXHIBIT "C"

J 3099 * 10 Feb 1937

Form approved by Lloyd's Underwriters' Fire and Non-Marine Association.

(Cut)

Any person not an Underwriting Member of Lloyd's subscribing this Policy, or any person uttering the same if so subscribed, will be liable to be proceeded against under Lloyd's Acts.

£ U.S. $25,000

No Policy or other Contract dated on or after 1st Jan., 1924, will be recognized by the Committee of Lloyd's as entitling the holder to the benefit of the Funds and for Guarantees lodged by the Underwriters of the Policy or Contract as security for their liabilities unless it bears at foot the Seal of Lloyd's Policy Signing Office.

LLOYD'S POLICY.

(Cut)

(Subscribed only by Underwriting Members of Lloyd's who have complied in all respects with the requirements of the Assurance Companies Act of 1909 as to security and otherwise.)

Whereas California Fruit Growers Exchange and/or Blessing Electric & Manufacturing Company and/or California Fruit Exchange of Sacramento and/or The Exchange Orange Products

Company and/or Exchange Lemon Products Company as their interests may appear, of Los Angeles, California, (hereinafter called "the Assured"), have paid Nine Hundred and One Dollars Premium or Consideration to Us, who have hereunto subscribed our Names to Insure against Loss as follows, viz.:—Excess Blanket Fidelity, as set forth in the wording attached hereto, which is to be taken and read as part of this policy.

Premium hereon calculated at 40% of Primary Premium during the period commencing with the 1st of November, 1936 and ending with the 1st of November, 1937, both days at noon Local Standard Time.

If the Assured shall make any claim knowing the same to be false or fraudulent, as regards amount or otherwise, this Policy shall become void, and all claim thereunder shall be forfeited.

Now know Ye, that We the Underwriters do hereby bind Ourselves, each for his own part, and not for Another, our Heirs, Executors, and Administrators, to pay or make good to the Assured or to the Assured's Executors, Administrators, and Assigns, all such Loss or Damage as aforesaid as may happen to the subject matter of this Insurance, or any part thereof during the continuance of this Policy; not exceeding the Sum of Twenty-five Thousand Dollars such payment to be made within Seven Days after such Loss is proved and that in proportion to the several Sums by each

of Us subscribed against our respective Names not exceeding the several Sums aforesaid.

In Witness whereof We, Underwriting Members of Lloyd's, have subscribed our Names and Sums of Money by Us insured.

Dated in London, the 26th Day of January, One Thousand Nine Hundred and Thirty-seven.

[Seal] [26]

Excess Fidelity Blanket

1. This Policy is to indemnify the Assured against all such direct loss as the Assured may sustain by reason of the dishonesty of any employees in their employment who are bonded under a Bond or Bonds (hereinafter called "Primary Bonds") issued by an approved Insurance Company, subject to the Conditions hereinafter contained.

2. It is understood and agreed that such employees are bonded under the aforesaid Primary Bonds for a total aggregate amount of approximately $972,000 and that this Policy of Excess Insurance only covers such portion of the ultimate net loss sustained by the Assured in respect of defalcations committed by any such employee subsequent to the 1st day of November 1935 as shall be in excess of the amount for which such employee is bonded under the said Primary Bonds, provided always that Underwriters' liability in respect of any number of losses shall in no event exceed the sum of $25,000 in the aggregate.

3. It is a condition of this Policy that the Assured shall not reduce the amount for which any position is covered under the said Primary Bond without the consent of the Underwriters hereto. It being understood and permitted that the Assured may reduce the Bond on any employee when he is transferred to a position covered in a smaller amount: that employees engaged or promoted to fill the positions held by employees leaving the employment of the Assured shall be bonded for the same amounts as their predecessors, and that any new employee additional to the total number employed at the inception of this Policy shall be bonded for a sum not less than the amount for which other employees engaged in the same class or grade of employment are bonded. It being understood and permitted that the Assured may regulate the amounts of bonds at locations according to the volume of business transacted.

4. It is further understood and agreed that this excess insurance is subject to all the terms and conditions of the said Primary Bonds insofar as the same do not conflict with the terms and conditions herein contained, and it is a condition of this Policy that in event of the Underwriters acting as Surety under the said Primary Bonds withdrawing or cancelling their guarantee in respect of any of the employees for any reason the Underwriters hereto shall be automatically relieved of their obligations hereby undertaken as regards

the acts of any such employee or employees subsequent to the date of such withdrawal or cancellation.

5. Warranted Free of All Claim for losses occurring subsequent to the expiry date of this Policy and for losses not discovered during its currency, with the understanding that in event of non-renewal the Assured shall have a period equal to that provided by the Discovery Clause of the aforesaid Primary Bonds (but not exceeding three years) in which to discover losses claimable under this Insurance.

6. This Policy shall be cancelled at any time at the request of the Assured, or by the Underwriters by giving 10 days' notice of such cancellation.

If this Policy shall be cancelled as hereinbefore provided, or become void or cease, the premium having been actually paid, the unearned portion shall be returned on surrender of this Policy or last renewal, the Underwriters retaining the customary short rate, except when this Policy is cancelled by the Underwriters giving notice they shall retain only pro rata premium. [27]

7. This Insurance shall automatically embrace any employee bonded under the Primary Bonds, the Assured undertaking to render on expiry hereof a return of additions and cancellations occurring during the currency of this Policy whereupon the premium shall be adjusted at Forty per cent of the Primary Premium.

8. It is understood and agreed that loss hereunder, if any, shall be adjustable with, recoverable by and payable to—

California Fruit Growers Exchange

and any notice or other communication required by this Policy or in connection therewith shall be deemed sufficient if sent by or received by California Fruit Growers Exchange, as the case may be.

9. It is hereby understood and agreed that, notwithstanding any provision to the contrary of this Policy the Underwriters will not claim salvage nor will they require the employer to apply as salvage or in reduction of any loss or claim under this Policy, any payments of premium or of income, dividends, loan proceeds, cash values, interest, or any other monies accruing or received, on account of the insurance plan for employees, known as the Sunkist Provident Plan: that insofar as the rights of the Underwriters under this Policy are concerned, no claim for loss arising under this Policy shall in any way be reduced or otherwise affected by the operation or existence of the said Sunkist Provident Plan, or any payments of premium or of income, dividends, loan proceeds, cash values, interest, or any other monies accruing or received on account thereof.

Attaching to and forming part of Lloyd's Policy No. 52342.

Service of Suit Clause:

It is agreed that in the event of dispute as to the validity of any claim made by the Assured under

this policy of insurance, Underwriters hereon, at the request of the Assured, will submit to the jurisdiction of the Courts of the United States of America and will comply with all legal requirements necessary to give such Courts jurisdiction, and that in any suit instituted by the Assured against any one of them upon this Contract, Underwriters hereon will abide by the ultimate decision of such Courts and settle accordingly.

All other terms and conditions remaining unchanged.

This slip is attached to and made a part of Policy No. 52342 of Underwriters at Lloyd's, London.

Los Angeles, California. November 1st, 1936.

Issued to California Fruit Growers Exchange.

SWETT & CRAWFORD

By [Signatures Illegible.] [28]

41

HARTLEY, COOPER & CO. LTD., AGENTS

Name	Share	
F. R. Bussell	3/30ths	40%
W. S. Smith	1/30th	
A. Walker	2/30ths	
S. G. Beer	3/30ths	
A. D'Ambrumenil	2/30ths	
C. E. Brill	1/30th	
C. B. Levita	1/30th	
W. Cooper	1/30th	
F. D. Burtwell	1/30th	
[illegible] Montefiore	1/30th	
E. Davies	1/30th	
A. H. Dancey	1/30th	
F. A. White	1/30th	
F. E. Wiltshire	1/30th	
F. S. Alexander	1/30th	
J. Davies	1/30th	
[illegible]	1/30th	
W. Murray	1/30th	
G. A. [illegible]	1/30th	
[illegible]	1/30th	
[illegible] Johnson	1/30th	
[illegible]	1/30th	
[illegible]	1/30th	
[illegible] McK[illegible]	1/30th	
F. A. White	1/7th	6%
F. D. Burtwell	1/7th	
F. R. Bussell	1/7th	
[illegible] Montefiore	1/7th	
H. S. [illegible]	1/7th	
E. Davies	1/7th	
S. G. Beer	1/7th	
A. H. Dancey	1/5th	4%
W. Cooper	3/5ths	
F. R. Bussell	1/5th	

16·46

F. BOLTON & CO LTD AGENTS

Name	Share	
I. A. Clatworthy	1/10th	10%
A. C. Grover	1/10th	
G. MacG. Harper	1/10th	
G. J. [illegible]	1/10th	
V. L. Evans	1/10th	
J. W. D. Mellor	1/10th	
F. H. D. Ward	1/10th	
J. H. [illegible]	1/10th	
F. [illegible]	1/10th	
J. H. Glover	1/10th	

JOHN POOLE & SONS LD. AGENTS

Name	Share	
Alick H. Poole	2/27ths	of 60%
S. Thompson	1/27th	
W. H. Campbell	1/27th	
H. R. Yorke	1/27th	
P. O. Hazelton	1/27th	
R. L. Kennedy	1/27th	
D. B. Thorp	1/27th	
D. H. Goldingham	2/27ths	
G. S. Thompson	1/27th	
H. V. Cochrane	2/27ths	
R. S. [illegible]	1/27th	
R. R. Campbell	1/27th	
I. D. Campbell	1/27th	
O. R. S. Poole	1/27th	
A. W. P. Lyon-Clark	1/27th	
E. S. W. Cattley	1/27th	
[illegible] Sanderson	1/27th	
H. A. Northen	1/27th	
Magnus Goodfellow	1/27th	
W. P. W. Holland	1/27th	
L. Franks	1/27th	
I. McK. Campbell	1/27th	
C. M. Newns	1/27th	
A. H. W. Picton	1/27th	

J. S. ROWE AGENT

Name	Share	
J. Stanley Rowe	3/32nds	of 40%
P. G. Yorke	3/32nds	
J. M. Beattie	1/8th	
W. K. Findlay	1/8th	
A. Beattie	3/32nds	
R. L. Glover	3/32nds	
S. Millard	1/8th	
K. W. Stone	1/16th	
B. Cooke	3/16ths	

28%

W. S. McBRIDE AGENT

Name	Share	
W. S. McBride	8/27ths	12%
William Mamhead	3/27ths	
D. [illegible]	3/27ths	
C. F. Etheridge	2/27ths	
J. A. Leighton	3/27ths	

E. W. PAYNE & CO. AGENTS

Name	Share
E. W. Payne	2/27ths
H. E. Tozer	2/27ths
P. W. Harding	2/27ths
F. N. Scudamore	2/27ths

PER F. R. Bussell (signature)

878 (1937)

(37)

A. B. DICK-CLELAND & SON, Agents

Name	Share
J. K. Dick-Cleland	4/119ths
A. B. Dick-Cleland	5/119ths
P. O. Daves	3/119ths
P. Fairweather	4/119ths
M. D. Barder	3/119ths
J. P. Phillips	3/119ths
M. Moses	3/119ths
N. B. V. Casey	3/119ths
R. A. C. Harding	3/119ths
G. W. N. Loynton	3/119ths
R. H. Piper	3/119ths
J. C. Quinnell	3/119ths
E. G. Whiteley	3/119ths
D. E. Mackintosh	3/119ths
B. F. Liston	3/119ths
E. T. [illegible]	2/119ths
G. U. [illegible]	3/119ths
A. C. [illegible]	3/119ths
W. [illegible]	2/119ths
A. S. [illegible]	2/119ths
[illegible]	2/119ths
[illegible]	3/119ths
[illegible]	3/119ths
[illegible]	[illegible]
[illegible]	[illegible]
[illegible]	[illegible]
[illegible]	[illegible]
[illegible]	[illegible]
[illegible]	[illegible]
[illegible] Cooke	3/119ths
[illegible]	3/119ths
J. W. A. Clare	2/119ths
A. H. [illegible]	3/119ths
G. E. [illegible]land	2/119ths
P. [illegible]	2/119ths
W. S. [illegible]	2/119ths
R. C. Hardman	2/119ths
D. O. Thornton	3/119ths
B. F. Blackwell	3/119ths
T. R. Shepherd-Cross	3/119ths
H. Harrison	4/119ths

4·01

643 (1937)

PER C. B. Dick-Cleland (signature)

(37)

A. B. DICK-CLELAND & SON, Agents

Name	Share
R. B. Piper	4/153rds
G. W. N. Loynton	1/153rd
M. Glyne	2/153rds
J. P. Phillips	1/153rd
I. Silverwood	2/153rds
T. O. Davis	1/153rd
N. B. V. Casey	2/153rds
H. W. W. Hesketh	3/153rds
M. D. Barder	1/153rd
P. M. Rideout	2/153rds
A. D. Vickers	3/153rds
B. B. Price	2/153rds
A. B. Dale	2/153rds
F. W. Clark	2/153rds
A. B. Dick-Cleland	3/153rds
R. B. Holman	3/153rds
P. W. Gardner	2/153rds
L. B. Cox	3/153rds
L. W. James	2/153rds
C. Mitchell	3/153rds
M. D. Rogerson	2/153rds
D. Watson	3/153rds
A. E. Lawrence	3/153rds
J. Muller Rowland	3/153rds
J. W. Ward	3/153rds
R. W. H. D. Reid	2/153rds
B. F. Eyston	2/153rds
J. W. A. Geare	1/153rd
F. M. M. Carlisle	3/153rds
G. L. Paul	3/153rds
J. N. Horlick	3/153rds
P. I. Jacobsen	3/153rds
H. B. Hawes	6/153rds
F. W. Rushbrooke	3/153rds
H. D. Jacobsen	3/153rds
W. Turner	3/153rds
B. B. Asken	3/153rds
J. R. Rant	3/153rds
C. B. Davis	3/153rds
H. E. Broom	3/153rds
H. R. Davis	3/153rds
G. W. Martin	3/153rds
D. A. Whitworth	3/153rds
E. H. B. Thackwell	3/153rds

5·35

E. F. OLIVER AGENT

Name	Share
E. B. Parke	2/153rds
C. B. Bilney	2/153rds

BAYLL, BOUGH, MAY & Co. AGENTS

Name	Share
C. D. L. Hay	2/153rds
G. T. Todd	2/153rds
L. C. Dorman	4/153rds
L. A. Redman	4/153rds
R. J. R. Aldrich-Blake	4/153rds
B. G. Salter	2/153rds
J. Hamer	2/153rds
T. L. Morel	2/153rds
C. D. Peachey	2/153rds
D. B. Redman	2/153rds
J. R. Vaughan Morgan	2/153rds
A. J. A. Wallace Barr	2/153rds
H. W. K. Wontner	2/153rds

c1115

645

SANDOR BIRCH LTD AGENTS

Name	Share
B. A. Forster	2/153rds
J. B. G. Dugdale	2/153rds
W. T. Scott Elliot	2/153rds

(1937)

PER C. B. Dick-Cleland (signature)

(37)

P. WIGHAM RICHARDSON & Co. LTD. AGENTS

Name	Share
P. Wigham Richardson	4/37ths
W. H. Cumming	4/37ths
A. Stott	3/37ths
R. D. Denman	3/37ths
Denman	3/37ths
J. Purves-Stewart	3/37ths
F. Samuel	3/37ths
E. E. Walker	3/37ths
R. S. Walker	3/37ths
G. S. Goldberg	3/37ths
W. H. H. Everett	2/37ths
B. L. Kiln	3/37ths

1·34

PER C. B. Dick-Cleland (signature)

644 (1937)

Name	Share
J. R. Rooper	1/30th
Thomas Forbes	1/30th
T. L. Forbes	2/30ths
W. C. Elphey	2/30ths
F. D. Bacon	3/30ths
C. F. Beadell	1/30th
S. H. Elphey	1/30th
L. G. Howe	2/30ths
J. G. Forbes	1/30th
A. Cuthbert	1/30th
Henry Forbes	1/30th
N. H. [illegible]	1/30th
W. A. Cantlay	1/30th
A. V. [illegible]	1/30th
J. M. Ballantyne	1/30th
R. F. A. Fresco	1/30th
D. G. Ellis	1/30th
H. T. Thompson	1/30th
F. C. Wright	4/30ths
F. V. Esthoven	1/30th
H. G. Beck	1/30th
H. G. Howe	1/30th

12·35

PER J. M. Ballantyne (signature)

6/63

47 (1937)

29

H. Babington Hill	3/46lbs	PER
H. B. Hill, Junr.	3/48lb	
Horace R. Hill	2/48lbs	
J. D. Stobart	2/48lbs	
W. G. W. Radford	1/48lb	
A. R. Athey	1/48lb	
F. R. Bromley	2/48lbs	
Leven and Melville	1/48lb	
E. M. Slightholme	1/48lb	
A. V. Reiner	2/48lbs	
W. C. Harrild	1/48lb	
A. G. Dalgety	1/48lb	
J. M. Kenward	1/48lb	
F. K. Bromley	1/48lb	
J. G. Westray	1/48lb	
A. S. Butler	1/48lb	
N. D. Charrington	1/48lb	
Harold Bristow	1/48lb	
C. F. Reiner	1/48lb	
J. S. S. Litchfield-Speer	1/46lb	

H. BABINGTON HILL AGENT

6·77

F. K. Hodgson	1/48lb	
E. T. S. Dugdale	1/48lb	
R. Coke	1/48lb	
W. Copping	1/48lb	
R. L. Thompson	1/48lb	
G. H. Kennedy	3/48lbs	
W. A. Hugging	2/48lbs	

W. A. HUGGINS AGENT

H. F. Elliott	2/48lb	
R. K. D. Kenton	1/48lb	
E. Geoffrey Toye	2/48lbs	

J. M. WHITTALL (Limited Pre 1939) AGENT

J. M. Whittall	2/48lbs	
P. W. O. Liddell	1/48lb	
J. R. Bryans	1/48lb	
M. C. Bryans	1/48lb	
A. F. Procter	1/48lb	
H. S. Egerton	1/48lb	773 (1937)

H. B. Hill

R. V. Hood	1/5lb	PER
E. E. St. Quintin	1/5lb	
L. E. St. Quintin	1/5lb	
H. Gore-Brown	1/10lb	
T. A. Tatton	1/10lb	
E. Hughes Hughes	1/10lb	
D. E. Mackintosh	1/10lb	777 (1937)

1·42

H. B. Hill

A. M. Allen	1/11lb	PER
H. Allen	1/11lb	
C. F. Brockholes	1/11lb	
W. A. C. Wilkinson	1/11lb	
C. S. S. Harding	1/11lb	
W. J. French	3/11lbs	
A. Fremantle	1/11lb	
C. Wilkinson	1/11lb	
[illegible] Allen	1/11lb	775 (1937)

2·1

H. B. Hill

M. P. Henderson	1/46lb	PER
D. E. C. Price	1/45lb	
A. E. Roberts	2/45lbs	
C. H. Roberts	1/45lb	
F. E. L. Roberts	1/45lb	
Rhayader	1/45lb	
C. A. M. Barlow	1/45lb	
G. de H. Vaizey	1/45lb	
Reginald Abel Smith	1/45lb	
Vivian A. Powell	1/45lb	
R. Owen Williams	1/45lb	
Owe H. Smith	1/45lb	
W. N. D. Drury	1/45lb	
S. G. L. Calor	1/45lb	
L. W. A. Chappell	1/45lb	
Ian Z. Malcolm	1/45lb	
H. F. Chaloner	1/45lb	
Rodney A. Price	1/45lb	
J. W. Wheeler Bennett	1/45lb	
A. H. Cleaver	1/45lb	
L. A. Lorimer	1/45lb	
M. L. Jacobs	1/45lb	
J. Michael Vaizey	1/45lb	
Robert L. H. Lender	1/45lb	
Alison B. Ferguson	2/45lbs	
C. L. Mackean	1/45lb	
J. W. Pilk	1/45lb	
W. [illegible] Vicar	1/45lb	
W. E. [illegible] Oman	1/45lb	
C. L. Ludd	1/45lb	
L. Fairfield	2/45lbs	
L. A. Ward	1/45lb	
J. Hetherington	1/45lb	
C. A. Monkesfield	1/45lb	
De Rambey	1/45lb	
J. Neal	1/45lb	
D. J. Camden	1/45lb	
F. E. Fehr	1/45lb	
D. N. Broad	1/45lb	
E. G. Hunt	1/45lb	
W. J. Dow	1/45lb	
W. D. Denham	1/45lb	000 (1937)

BEVINGTON, VAIZEY & FOSTER LTD. Agents

8·23

W. B. Graham

C. V. Sinclair	1/18lb	PER
N. A. J. Cobb	1/18lb	
R. C. V. Holloway	1/18lb	
W. T. Tansley	1/18lb	
Henry Bradford	1/18lb	
J. L. Tate	1/18lb	
J. A. Lyon	1/18lb	
P. R. MacKinnon	1/18lb	
H. B. Taylor	1/18lb	
C. S. Taylor	1/18lb	
R. D. King	1/18lb	
J. R. Bridgman	3/18lbs	
Arthur D. Bradford	3/18lbs	991 (1937)

A. D. BRADFORD, Agent

4·12

W. B. Graham

369 27/1/36

Ashbeton Pownall	1/22nd	
E. B. Graham	1/22nd	
Gustav Besley	1/22nd	
T. Hammond Wells	1/22nd	
C. Kenneth Murchison	1/22nd	
Kenneth G. Poland	1/22nd	
Albert V. F. Seymour	1/22nd	
R. Holdsworth Williams	1/22nd	
W. Frederick Williams	1/22nd	
Robert Lynch White	1/22nd	
J. H. Dundas-Grant	3/88lbs	of 3/4ths
F. E. Richards	1/22nd	
W. P. Wild	5/88lbs	
P. I. B. Woodhouse	1/22nd	
P. H. Peskett	1/22nd	
G. McKechnie	1/22nd	
J. E. Newton	1/22nd	
J. W. S. Greenlees	1/22nd	
I. R. Bacon	1/22nd	
A. H. C. Sutherland	1/22nd	
B. H. Williams	1/22nd	
W. D. Williams	1/22nd	

6·17

Ashbeton Pownall	1/7th	
Gustav Besley	1/7th	
T. Hammond Wells	1/7th	
Albert V. F. Seymour	2/7ths	
R. Holdsworth Williams	1/7th	
W. Frederick Williams	1/7th	
W. P. Wild	1/7th	
P. H. Peskett	1/7th	
C. Kenneth Murchison	1/14th	782

of 1/4th

PER (1937)

E. B. Graham

L. P. Langton	9/124ths	PER
H. C. Back	1/31st	
R. H. Coachman	3/124ths	
E. G. Dance	1/31st	
J. C. Dance	1/31st	
W. J. Evans	1/31st	
H. Goring	3/62nds	
A. R. Harvey	1/31st	
J. T. Kemp	1/31st	
G. A. Nelson	1/31st	
J. Orr-Ewing	1/31st	
A. G. Robertson	1/31st	
R. Shepherd	1/31st	
J. G. Wilson	3/62nds	

LESLIE LANGTON AGENT

8·23

Leslie Langton

A. D. Bradford	1/31st	
C. E. W. Austin	1/31st	
H. Shepherd	1/31st	

JOHN ROBINSON & CO. (LEICESTER) LTD. Agents

Alan Margetson	1/31st	
W. Lee Roberts	1/31st	
S. F. Bayer	1/31st	
E. J. Spalding	1/31st	
H. C. Bayer	1/31st	
[illegible] Bayer	1/31st	
H. M. Bayer	1/31st	
F. C. Davey	1/31st	
J. H. Davey	1/31st	
P. Stewart	1/31st	

ALAN MARGETSON Agent

2·4/12

A. S. H. Hull	3/62nds	
T. E. O. Hull	1/31st	10 (1937)

A. & H. Hull Agents

Form J

564

No. 52342

LLOYD'S, LONDON.

CALIFORNIA ... LOS ANGELES

... Dollars

£ ...5,000 @ % £/901.00 :

Policy and Stamp .25 :

£ 901.25 :

Date of Expiry 1st November, 1937 Noon - L.S.T.

The Assured is requested to read this Policy, and, if incorrect, return it immediately for alteration.

In the event of any occurrence likely to result in a claim under this Policy, immediate notice should be given to:—

4·11

K. G. Poland	1/19th
C. A. Sheffield	1/38th
F. B. Cooper	1/38th
C. M. Cooper	1/39th
E. Gabbon	1/38th
F. J. Cressick	1/39th
H. W. Norden	1/19th
Kensley	1/19th
B. S. Evans	1/38th
A. M. Gabbon	1/38th
R. E. Heath	1/38th
A. D. Andruemenil	1/19th
J. G. Davison	1/39th
J. H. V. Doctra	1/39th
P. L. Ternville	[illegible]
P. H. [illegible]	[illegible]
[illegible]	[illegible]
[illegible]	[illegible]
D. A. Poland	[illegible]
[illegible]	[illegible]
Shepard	[illegible]
Sudley	1/38th
A. S. K. D. A. Gore	1/38th
J. M. Fowler-Seafern	1/38th
H. Clark	1/38th
J. E. Goddard	1/39th
[illegible]	[illegible]
[illegible]	1/38th
[illegible]	1/39th
A. G. [illegible]	1/38th
P. L. [illegible]	1/38th
B. P. [illegible]	1/38th
G. L. Lloyd	1/38th
J. F. C. Dougall	1/38th
F. B. Childe	1/38th

PER

109 (1937)

4·12

Neville Dixey	3/26ths
H. F. S. Leake	3/52nds
William Palmer	3/52nds
C. Alexander Harvey	3/26ths
S. Walter Morris	3/52nds
E. H. Chambers	3/52nds
Thomas Armstead	3/52nds
A. E. Chambers	3/52nds
Gustav. Bencey	3/52nds
Franklin Lushington	3/52nds
Fyfe Duthie	3/52nds
V. P. Lobb	3/52nds
W. F. Halford	1/26th
W. A. P. Phillips	1/26th
E. H. Johnson	3/52nds
C. A. G. McLagan	3/52nds

PER

Neville Dixey

232 (1937)

4·11

Neville Dixey & C. A. Harvey Agents

P. F. Chaplin	3/47ths	J. F. H. Houldsworth	3/47ths
T. D. Dobson	3/47ths	H. W. Houldsworth	3/47
Isaac Wolfson	3/47ths	John Bourne	3/47
H. D. Spratt	3/47ths	Stafford Bourne	3/47
James Johnston	3/47ths	E. C. Holroyde	3/4
Leonard Arnott	3/47ths	W. D. Roberts	3/4
Percy Fisher	3/47ths	J. H. Garnett	3/4
James Roberts	3/47ths	R. W. Johnson	2/47

PER

36794

198 (1937)

C. Alexander Harvey

3·29

Norman Frizzell & Partners, Ltd. Agents

T. Norman Frizzell	6/78ths	of 86
Chas. C. Byers	6/78ths	
J. Beath	3/78ths	
F. K. Kiefberg	6/78ths	
Walter Lawrence	6/78ths	
S. L. Chappell	2/78ths	
C. G. Lawson	4/78ths	
C. A. Hewitt	4/78ths	
R. G. Trenost	2/78ths	
I. C. Lane	5/78ths	
G. H. Paxton	5/78ths	
C. R. G. Hewitt	2/78ths	
G. F. C. Paw	2/78ths	
V. H. [illegible]	[illegible]	
F. E. Haines	[illegible]	
C. D. Smith	4/78ths	
G. V. Palmer	2/78ths	
A. D. Andruemenil	4/78ths	
G. W. Scott	3/78ths	
F. P. A. Langton	1/78th	
H. Pennington	3/78ths	
A. W. Palmer	5/78ths	
R. P. A. Langton	2/9ths	of 15%
A. W. Palmer	2/9ths	
T. Norman Frizzell	1/9th	
G. W. Scott	2/9ths	
H. Pennington	2/9ths	

724/36

PER

975

T. Norman Frizzell

(1937)

3·29

Charles H. Roberts	Roberts & Hails Agents	1/19th
Rhayader		1/19th
T. L. L. Roberts		2/19ths
A. F. Roberts		6/19ths
P. W. Milligan		1/19th
A. C. Roberts		1/19th
A. E. Greenwell	Alfred Metham Agent	2/19ths
J. C. Stevens		1/19th
E. Deane		1/19th
P. Arnold		1/19th
W. D. Bishop		1/19th
F. W. Clark		1/19th
R. Paltridge		1/19th

PER

A. Metham.

482 (1937)

·41

A. E. Roberts	1/2
C. H. Roberts	1/4th
Rhayader	1/4th

PER

J. C. N. Roberts.

675A

622 (1937)

4·12

Arbon, Langrish & Co. Ltd., Agents

S. J. Trounce	1/22nd
H. J. Arbon	2/22nds
H. M. Isaacs	2/22nds
A. [illegible]	2/22nds
M. G. Isaacs	1/22nd
P. Fitzgerald	1/22nd
C. H. Cowan	1/22nd
D. G. Isaacs	1/22nd
J. W. Sutton	1/22nd
Reading	1/22nd
E. Edward Levy	1/22nd
F. W. Cooke	1/22nd
Melchett	1/22nd
R. Waley Cohen	1/22nd
G. H. Booker	1/22nd
G. B. Ismay	1/22nd
P. Tiarks	1/22nd
A. Cunard	1/22nd
L. A. de H. Lyle	1/22nd

PER

S. J. Trounce

Fid 146

585 (1937)

31

EXHIBIT "D"

United States Fidelity and Guaranty Company
Baltimore, Maryland
(A Stock Company)
(Emblem)

EXCESS COMMERCIAL BLANKET BOND
(Standard Form AA)
No. 02-308-37

Know All Men by These Presents, That in consideration of an annual premium, the United States Fidelity and Guaranty Company (hereinafter called Surety) hereby agrees to indemnify those designated as Employer in Joint Insured Rider attached hereto as a part hereof of.....
(hereinafter called Employer) to an amount not exceeding in the aggregate, for all losses under this bond, the sum of Twentyfive Thousand dollars ($25,000.00), against That Part of Any and All Direct Loss or Losses which any one or more of the Employees, as defined in Section A, paragraph 2, shall cause to the Employer In Excess of the amount or amounts carried under the primary fidelity suretyship described in Section A, paragraph 2, on the Employee or Employees, respectively, causing such loss or losses, through any act or default covered under said primary fidelity suretyship and not excluded under Section A, paragraph 5, and committed by such Employee or Employees, acting directly or in collusion with others, during the term of this bond as defined in Section A, paragraph 1, and

Exhibit "D"—(Continued)

while this bond and said primary fidelity suretyship are in force as to such Employee or Employees, and discovered, as provided in Section B, paragraph 2, before the expiration of twelve months from the cancellation of this bond as to such Employee or Employees, or the cancellation of this bond as an entirety, whichever shall first happen.

This bond is executed and accepted subject to the agreements and limitations set forth in Section A of this bond and the conditions set forth in Section B of this bond, which conditions shall be conditions precedent to recovery under this bond.

Section A

1—The term of this bond begins with the 1st day of November, 1937, standard time at the address of the Employer above given, and ends at 12 o'clock night, standard time as aforesaid, on the effective date of the cancellation of this bond; and the payment of annual premiums during such term shall not render the amount of this bond cumulative from year to year.

2—The word "Employees" as used in this bond means only those natural persons located within any of the States of the United States and within the District of Columbia, the Hawaiian Islands, Alaska, Canada or Newfoundland, who are, on the effective date of this bond, in the service of the Employer and covered by name or position under the existing primary fidelity suretyship listed herein below, and

Exhibit "D"—(Continued)

those natural persons so located who shall be, at any time during the term of this bond, in the service of the Employer and covered by name or position under said primary fidelity suretyship, or under additional primary fidelity suretyship hereafter taken out in a company agreed upon in writing between the Employer and the Surety. The word "Employees," however, does not mean firms and corporations nor does it mean brokers, factors, commission merchants, consignees, contractors and agents or representatives of the same general character.

The Existing Primary Fidelity Suretyship Is as Follows:

Schedule Bond No. 14815-03-62-12—favor California Fruit Growers Exchange, et al. [32]

3—(a) The Employer must, throughout each premium year of the term of this bond, carry under said primary fidelity suretyship on each Employee covered thereunder at the beginning of such premium year not less than the amount carried under said primary fidelity suretyship on such Employee at the beginning of such premium year, and agreed upon by the Employer and the Surety as the minimum amount to be carried on such Employee, and must, in case any successor be named during any premium year for any Employee, carry under said primary fidelity suretyship on such successor, throughout the remainder of such premium year, not less than the amount carried under said primary

Exhibit "D"—(Continued)

fidelity suretyship on the Employees so succeeded. If, during any premium year the Employer shall cover under said primary fidelity suretyship any natural person but not as the successor of any Employee, and shall desire such person to be covered under this bond, the Employer must carry under said primary fidelity suretyship on such person throughout the remainder of such premium year not less than the amount to be agreed upon in writing between the Employer and the Surety. (b) If the Employer shall reduce the amount of primary fidelity suretyship required by this bond to be carried on any Employee, the Surety shall be liable on account of loss caused by such Employee, only in case such loss be in excess of the amount so required to be carried, and then for not more than such excess. If the Employer shall increase the amount of primary fidelity suretyship required by this bond to be carried on any Employee the Surety shall be liable on account of loss caused by such Employee through any act or default committed after the date of such increase, only in case such loss be in excess of such increased amount, and then for not more than such excess.

4—If any natural persons shall be taken into the service of the Employer, through merger or consolidation with some other concern, the Employer shall give the Surety written notice thereof. If the persons so taken into the service of the Employer be covered under primary fidelity suretyship, in accord-

Exhibit "D"—(Continued)

ance with the provisions of paragraphs 2 and 3 of Section A of this bond, and if as a result thereof there be an increase in the number of Employees covered under this bond, then the Employer shall pay to the Surety an additional premium computed pro rata from the date of such merger or consolidation to the end of the current premium year.

5—(a) If said primary fidelity suretyship gives coverage or indemnity against losses caused by acts or defaults broader than larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, willful misapplication or other fraudulent or dishonest acts, this bond, notwithstanding such broader coverage or indemnity shall be liable only in case any Employee or Employees shall cause an excess loss or losses under said primary fidelity suretyship through larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, willful misapplication or other fraudulent or dishonest acts, and then for not more than such excess. (b) If said primary fidelity suretyship limits liability for loss to the loss of certain designated classes or kinds of property, then this bond shall be liable only in case such loss or loses as aforesaid are of such designated property, and then for not more than such excess. (c) If the time limits specified in said primary fidelity suretyship for discovery of, or making claim for, loss after the expiration, termination or cancellation thereof as an entirety, or for filing notice of loss, for filing proof

Exhibit "D"—(Continued)

of loss or for bringing suit are less than the corresponding time limits in this bond, then this bond shall be subject to the time limits specified in said primary fidelity suretyship as if written herein. (d) If the time limit specified in said primary fidelity suretyship for the discovery of, or making claim for, or for filing proof of loss for, loss after the happening of any of the events specified in Section A, paragraph 8, be greater or less than the corresponding time limit in this bond, then this bond shall be subject to the time limit specified in said primary fidelity suretyship as if written herein, provided, however, that in no event shall the time for discovery of, or making claim for, or for filing proof of loss for, any such loss be extended beyond the time within which, under the terms of this bond, losses must be discovered or claims must be made or proof of loss filed after the cancellation hereof as an entirety. (e) If said primary fidelity suretyship contains any limitation, condition or warranty, other than those above mentioned, which is not inconsistent with any such limitation, condition or warranty in this bond, then this bond shall be subject to such limitation, condition or warranty as if written herein.

6—Any sum paid in settlement of any loss under this bond shall be deducted from the amount of this bond, such deduction to be effective as of the date upon which the Employer sends to the Surety notice of such loss, and only the remainder of such amount

Exhibit "D"—(Continued)

shall apply to other losses resulting from acts or defaults covered by this bond whether committed before said date or thereafter, or partly before and partly thereafter. The sum so deducted shall be automatically restored as of said date but only as to losses resulting from acts or defaults covered by this bond which shall be committed thereafter; and in consideration of such restoration the Employer shall pay to the Surety, on demand, an additional premium computed pro rata upon the sum so restored from said date of restoration to the end of the premium year. In no event shall the Surety be liable under this bond for an amount greater than that specified in line 6 of this bond on account of any one loss or series or losses caused by any Employee or combination of Employees.

7—In case any reimbursement be obtained or recovery be made by the Employer or the Surety on account of any loss covered under this bond, the net amount of such reimbursement or recovery, after deducting the actual cost of obtaining or making the same, shall be applied to reimburse the Employer in full for that part, if any, of such loss in excess of the aggregate of the amounts of all bonds, insurance and indemnity, including this bond, taken by or for the benefit of the Employer and covering such loss, and the balance, if any, or the entire net reimbursement or recovery, if there be no such excess loss, shall be applied to that part of such loss covered by this bond, or, if payment shall have been

Exhibit "D"—(Continued)

made by the Surety, to its reimbursement therefor. The Employer shall execute all necessary papers and render all assistance, not pecuniary, to secure unto the Surety the rights provided for in this paragraph. The following shall not be reimbursement or recovery within the meaning of this paragraph: suretyship, insurance or reinsurance, also security or indemnity taken from any source by or for the benefit of the Surety.

8—This bond shall be deemed cancelled as to any Employee: (a) immediately upon discovery by the Employer, or, if the Employer be a copartnership, by any partner thereof, or, if the Employer be a corporation, by any officer thereof not in collusion with such Employee, of any fraudulent or dishonest act on the part of such Employee; (b) upon the effective date of the termination or cancellation of said primary fidelity suretyship as to such Employee or as to the position filled by such Employee; (c) at 12 o'clock night, standard time as aforesaid, upon the effective date specified in a written notice served upon the Employer or sent by registered mail. Such last mentioned date, if the notice be served, shall be not less than fifteen days after such service, or if sent by registered mail, not less than twenty days after the date borne by the sender's registry receipt. [33]

9—This bond shall be deemed cancelled as an entirety: (a) upon the effective date of the termination or cancellation of said primary fidelity

Exhibit "D"—(Continued)

suretyship; (b) at 12 o'clock night, standard time as aforesaid, upon the effective date specified in a written notice served by the Employer upon the Surety or by the Surety upon the Employer, or sent by registered mail. Such last mentioned date, if the notice be served by the Surety, shall be not less than thirty days after such service, or, if sent by the Surety by registered mail, not less than thirty-five days after the date borne by the sender's registry receipt. In case of cancellation the Surety shall, on demand, refund to the Employer the unearned premium computed pro rata, but such return premium shall be repaid to the Surety in case of payment of a loss under this bond.

Section B

1—No Employee, to the best of the knowledge of the Employer, or, if the Employer be a co-partnership, of any partner thereof, or, if the Employer be a corporation, of any officer thereof not in collusion with such Employee, has committed any fraudulent or dishonest act in any position in the service of the Employer or otherwise.

2—The Employer shall notify the Surety by telegram or registered letter addressed and sent to it at its Branch office in the City of Los Angeles, California, of any act or default on the part of any Employee which may involve a loss hereunder at the earliest practicable moment, and at all events not later than thirty days after discovery thereof

Exhibit "D"—(Continued)

by the Employer, or, if the Employer be a copartnership, by any partner thereof, or, if the Employer be a corporation, by any officer thereof not in collusion with such Employee.

3—Within ninety days after discovery as aforesaid of any act or default committed by any Employee and causing loss covered by this bond the Employer shall file with the Surety affirmative proof of loss, itemized and duly sworn to, with the name of such Employee, and shall, if requested by the Surety, produce from time to time, for examination by its representatives, all books, documents and records pertaining to such loss.

4—No suit to recover on account of loss under this bond shall be brought before the expiration of three months from the filing of proof as aforesaid on account of such loss, nor after the expiration of twelve months from discovery as aforesaid of the fraudulent or dishonest act causing such loss.

5—If any limitation in this bond for giving notice, filing claim or bringing suit is prohibited or made void by any law controlling the construction of this bond, such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

Exhibit "D"—(Continued)

Signed, sealed and dated this 15th day of November, 1937.

UNITED STATES FIDELITY AND GUARANTY COMPANY

T. HARTLEY MARSHALL
Vice-President

ROBERT H. SAYRE
Assistant Secretary [34]

RIDER

To be attached to and form a part of Excess Commercial Blanket Bond No. 02-308-38 issued by the United States Fidelity and Guaranty Company, Surety, in favor of California Fruit Growers Exchange, et al, Employer, in the amount of Twenty five Thousand Dollars ($25,000.00), and dated the 1st day of November, 1937.

It is hereby understood and agreed that, notwithstanding any provision to the contrary of the bond to which this rider is attached, the surety will not claim salvage nor will it require the employer to apply as salvage or in reduction of any loss or claim under said bond, any payments of premium or of income, dividends, loan proceeds, cash values, interest, or any other moneys accruing or received on account of the insurance plan for employees known as the Sunkist Provident Plan; that insofar as the rights of the surety under said bond are concerned no claim for loss arising under said bond

Exhibit "D"—(Continued)

shall in any way be reduced or otherwise affected by the operation or existence of the said Sunkist Provident Plan, or any payments of premium or of income, dividends, loan proceeds, cash values, interest, or any other moneys accruing or received on account thereof.

The attached bond shall be subject to all its terms, agreements, limitations and conditions except as herein expressly modified.

This rider shall be effective on and after the 1st day of November, 1937.

Signed, sealed and dated this 15th day of November, 1937.

UNITED STATES FIDELITY AND GUARANTY COMPANY
T. HARTLEY MARSHALL
Vice-President
ROBERT H. SAYRE
Assistant Secretary [36]

Rider

To be attached to and form a part of Excess Commercial Blanket Bond No. 02-308-37 issued by the United States Fidelity and Guaranty Company, Surety, in favor of California Fruit Growers Exchange, et al, Employer, in the amount of Twenty-five Thousand Dollars ($25,000.00), and dated the 1st day of November, 1937.

It is hereby understood and agreed that, not-

Exhibit "D"—(Continued)

withstanding any provision to the contrary of the bond to which this rider is attached, in case a loss is alleged to have been caused by the fraud or dishonesty of one or more of a group of Employees, all of whom are covered under the attached bond, and the Employer shall be unable to designate the specific employee or employees causing such loss, the Employer shall nevertheless have the benefit of the attached bond, provided that the evidence submitted reasonably establishes that the loss was in fact due to the fraud or dishonesty of one or more of the said Employees of the said group, and provided further that the liability of the Surety for any such loss shall not exceed in the aggregate the sum of Twenty five Thousand Dollars ($25,000.00).

The attached bond shall be subject to all its terms, agreements, limitations and conditions except as herein expressly modified.

This rider shall be effective on and after the 1st day of November, 1937.

Signed, sealed and dated this 15th day of November, 1937.

UNITED STATES FIDELITY AND GUARANTY COMPANY

T. HARTLEY MARSHALL
Vice-President

ROBERT H. SAYRE
Assistant Secretary. [37]

Exhibit "D"—(Continued)

United States Fidelity and Guaranty Company
Baltimore, Maryland
(A Stock Company)
[Emblem]

JOINT INSURED RIDER

To be attached to and form a part of Excess Commercial Blanket Bond No. 02-308-37 issued by the United States Fidelity and Guaranty Company, hereinafter called Surety, in favor of those hereinafter designated as Employer in the amount of Twenty five Thousand Dollars ($25,000.00), and dated the 1st day of November, 1937.

In consideration of the premium charged for the attached bond it is understood and agreed, anything in the attached bond to the contrary notwithstanding, as follows:

1—That from and after the time this rider becomes effective the following are covered under the attached bond and designated as Employer

California Fruit Growers Exchange
Blessing Electric and Manufacturing Company
California Fruit Exchange
The Exchange Orange Products Company
Exchange Lemon Products Company

2—That notice cancelling the attached bond as an entirety, or as to any or all of those designated as Employer or as to any Employee shall be given as provided therein either by the Employer first named

Exhibit "D"—(Continued)

in the paragraph hereof numbered 1 or the Surety to the other, as the case may be.

3—That the attached bond shall be deemed cancelled as to any Employee immediately upon discovery by any Employer, or by any partner of any Employer, if a partnership, or by any officer of any Employer, if a corporation, not in collusion with such Employee of any fraudulent or dishonest act on the part of such Employee.

4—That the Employer first named in the paragraph hereof numbered 1 shall, in accordance with the provisions of the attached bond and within the time therein specified after discovery by any Employer, or by any partner of any Employer, if a partnership, or by any officer of any Employer, if a corporation, not in collusion with such Employee, of any act or default on the part of any Employee which may involve a loss under the attached bond, give notice to, and furnish proof of loss to, the Surety, bring legal proceedings for its own account or as trustee for any Employer sustaining any loss, make adjustments and settlements on account of any loss and receive payment therefor in its own name, and any payment so made to the Employer first named in the paragraph hereof numbered 1 shall fully release the Surety on account of the loss so paid.

5—That regardless of the number of years the attached bond shall continue in force and of the number of premiums which shall be payable or

Exhibit "D"—(Continued)

paid, the Surety shall not be liable under the attached bond, whether to one or more of those covered under the attached bond as Employer, including those designated above and those heretofore and those hereafter covered as Employer, for more in the aggregate than the amount set forth in line 6 of the attached bond, subject nevertheless to subsection 6 of Section A thereof.

6—That the Surety may, at the request of, or with the consent of, the Employer first named in the paragraph hereof numbered 1, add to the list of those designated as Employer, increase or decrease the amount of the attached bond, issue any rider or riders to form a part thereof and/or cancel or anul any of the riders attached or to be attached thereto.

7—That if the attached bond be cancelled as an entirtey as herein provided, or in any other manner, there shall be no liability under the attached bond on account of any loss unless discovered before the expiration of twelve months from such cancellation, and that if prior to the cancellation of the attached bond as an entirety, the attached bond be cancelled as herein provided, as to any Employee, or be cancelled as to any Employer as herein provided or in any other manner, there shall be no liability under the attached bond on account of any loss caused by such Employee or sustained by such Employer unless discovered before the expiration of twelve months from such cancellation as to

Exhibit "D"—(Continued)

such Employee or as to such Employer, as the case may be.

8—That the attached bond shall be subject to all its agreements, limitations and conditions except as modified in, or in accordance with, this rider.

9—That this rider shall be effective on and after the 1st day of November, 1937, standard time, at the main office of the Employer first named in the paragraph hereof numbered 1.

Signed, sealed and dated this 15th day of November, 1937.

UNITED STATES FIDELITY AND GUARANTY COMPANY

T. HARTLEY MARSHALL
Vice-President

ROBERT H. SAYRE
Assistant Secretary

Accepted for itself and all other Employers covered under the attached bond:

CALIFORNIA FRUIT GROWERS EXCHANGE

By R. S. [Illegible]
Assistant Secretary [38]

Exhibit "D"—(Continued)

[Emblem]

United States Fidelity and Guaranty Company
Baltimore, Maryland

RIDER

No. 02-308-37 $.....

To be attached to and form a part of Excess Commercial Blanket Bond, (Standard Form AA) No. 14815-02-308-37, issued by the United States Fidelity and Guaranty Company, of Baltimore, Md., in the amount of Twenty-Five Thousand Dollars ($25,000.00), in favor of California Fruit Growers Exchange, et al (hereinafter called Employer), and dated the 1st day of November, 1937.

Whereas, Lloyds issued an Excess Blanket Fidelity Bond (hereinafter called the prior bond), effective the First day of November, 1936, in the amount of Twenty-Five Thousand Dollars ($25,000.00), and in favor of the Employer; and

Whereas, the prior bond, as of the effective date of the attached bond, has been terminated or cancelled by notice or agreement, as is evidenced by the issuance and acceptance of the attached bond and this rider;

Now, Therefore, it is hereby understood and agreed as follows:

1. That the attached bond shall be construed to cover, subject to its terms, conditions and limitations, any loss or losses under the prior bond which shall be discovered after the expiration of the time

Exhibit "D"—(Continued)

limited therein for the discovery of loss thereunder, and before the expiration of the time limited in the attached bond for the discovery of loss thereunder; provided that such loss or losses would have been recoverable under the prior bond had it not been cancelled or terminated; and provided further, that the acts or defaults causing such loss or losses be such as are covered under the attached bond on its effective date.

2. That nothing in the attached bond or this rider contained shall be construed as increasing the time for discovery of any loss or losses under the prior bond beyond what would have been the time for such discovery had the prior bond not been cancelled or terminated.

3. That liability under the attached bond as extended by this rider on account of loss or losses under the prior bond shall not exceed the amount of the attached bond on its effective date less all deductions on account of all payments made under the attached bond and the attached bond as extended by this rider, or the amount which would have been recoverable under the prior bond on account of such loss or losses had the prior bond not been cancelled or terminated, if the latter amount be the smaller.

4. That any sum or sums which shall be paid under the attached bond as extended by this rider on account of any loss or losses under the prior bond shall reduce or be deducted from the amount

Exhibit "D"—(Continued)

of the attached bond in the same manner and subject to the same conditions and limitations as payments under the attached bond, but any sum so reducing or deducted from the amount of the attached bond shall be restored thereto as therein provided.

Signed, sealed and dated this 12th day of January, 1938.

UNITED STATES FIDELITY AND GUARANTY COMPANY

J. ST. PAUL WHITE

Attorney-in-Fact.

Accepted:

CALIFORNIA FRUIT GROWERS EXCHANGE

By [Illegible],

Asst. Secretary. [39]

[Endorsed]:Filed Mar. 12, 1941. [40]

[Title of District Court and Cause.]

SUMMONS

To the above named Defendant:

You are hereby summoned and required to serve upon George E. Farrand, plaintiff's attorney, whose address is: 1028 Pacific Southwest Bldg., 215 W. 6th St., Los Angeles, California, an answer to the complaint which is herewith served upon you, with-

in 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

[Seal] R. S. ZIMMERMAN,
Clerk of Court.
By J. M. HORN,
Deputy Clerk.

Date: March 12, 1941.

Note.—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure. [41]

RETURN ON SERVICE OF WRIT

United States of America,
Southern District of California—ss:

I hereby certify that I served the annexed, Summons, and complaint, on the therein-named United States Fidelity and Guaranty Company, a corporation, by handing to and leaving a true and correct copy thereof with Harold Gillespie, designated agent, personally at Los Angeles in said District on the 14th day of March, A. D. 1941.

Marshal's Fees, $2.00; Expenses, $0.14. Total, $2.14.

ROBERT E. CLARK,
U. S. Marshal.
By J. P. LUVELLE,
Deputy.

[Endorsed]: Filed Mar. 17, 1941. [42]

[Title of District Court and Cause.]

MOTION AND ORDER AS TO AMENDMENT OF COMPLAINT

Comes now the plaintiff above named and moves the Court ex parte for an order that the complaint be amended by interlineation in conformity with the amendment to complaint heretofore filed pursuant to Rule 15 (a), Rules of Civil Procedure for the district courts of the United States. The undersigned counsel for plaintiff hereby represent to the Court that no pleading responsive to the complaint or the amendment thereto has been served.

GEORGE E. FARRAND
EDWARD W. TUTTLE
EDWARD E. TUTTLE
Attorneys for Plaintiff.

It is so Ordered.

Dated April 9, 1941.

H. A. HOLLZER,
District Judge. [43]

[Endorsed]: Filed Apr. 9, 1941. [44]

[Title of District Court and Cause.]

AMENDMENT TO COMPLAINT

Comes now the plaintiff above named and makes the following amendment to its complaint before any responsive pleading has been served or filed,

by striking therefrom certain portions thereof as follows:

1. Strike from the title of the said cause the words "an unincorporated association" found on page 1, lines 13 and 14;

2. Strike the words "an unincorporated association of" found on page 2, paragraph III, line 13, of the said complaint;

3. Strike the words "and were and are engaged in the business of issuing policies of Fidelity Insurance," found on page 2, paragraph III, lines 19 and 20 of the complaint.

GEORGE E. FARRAND
EDWARD W. TUTTLE
EDWARD E. TUTTLE
215 West Sixth Street
Los Angeles, California. [45]

AFFIDAVIT OF SERVICE BY MAIL

(C. C. P. 1....1)
(Must be attached to original or a true copy of paper served)

State of California,
County of Los Angeles—ss.

The undersigned affiant, being sworn says that She is, and was at the time of the service hereinafter mentioned, a citizen of the United States, over 18 years of age, a resident of Los Angeles County and not a party to the within cause; that affiant's business address is 1028 Pacific Southwest Building,

215 West Sixth Street, Los Angeles, California; that affiant served a copy of the attached Amendment to Complaint by placing said copy in an envelope addressed to United States Fidelity and Guaranty Company at its office address 111 West 7th Street, Los Angeles, California; that said envelope was then sealed and thereafter on April 8, 1941, affiant deposited it in the mail at Los Angeles, California, with postage fully prepaid thereon; that there is, and at the time of such service was,

(a) delivery service by United States mail at the place so addressed;

NANCY DUNCAN
Affiant

Subscribed and sworn to before me April 8, 1941.

[Seal] JENNIE C. PATTERSON
Notary Public in and for the County of Los Angeles, State of California. [46]

[Endorsed]: Filed Apr. 9, 1941. [47]

[Title of District Court and Cause.]

ANSWER OF UNITED STATES FIDELITY AND GUARANTY COMPANY

Defendant, United States Fidelity and Guaranty Company, a corporation, answering the complaint of plaintiff, admits, denies and alleges:

First Defense.

The complaint fails to state a claim against defendant upon which relief can be granted.

Second Defense.

I.

Defendant admits the allegations contained in paragraphs I, II, III, IV, and V of plaintiff's complaint. [48]

II.

Answering paragraph VI of plaintiff's complaint, defendant admits that it executed and delivered to plaintiff a primary fidelity bond on or about October 23, 1912, with modifications thereof from time to time in writing by signed endorsements attached thereto as shown by "Exhibit A" attached to plaintiff's complaint, and alleges that in addition to the aforesaid endorsements, a schedule of the employees for whom coverage was afforded and the amount of the liability of defendant for acts of each of such employees, was listed from time to time under said bond, and denies that the coverage under said bond or the provisions thereof were other or different than as provided in said bond and the endorsements attached thereto as shown by said "Exhibit A" attached to plaintiff's complaint; defendant further admits that said primary bond was a continuing contract continuously in full force and effect from the 23rd day of October, 1912, to and including the time of the filing herein of this answer, but except as herein specifically admitted,

defendant denies each and every allegation in said paragraph.

III.

Defendant admits the allegations contained in paragraph VII of plaintiff's complaint, and in addition thereto, alleges that the certificate of insurance and policy of insurance therein referred to, were made, executed and delivered to plaintiff with the purpose and intent of Underwriting Members of Lloyd's and the persons by and on whose behalf said certificate and policy were issued to insure plaintiff against losses sustained by plaintiff by reason of the dishonesty or defalcations of any employee of plaintiff, including one Floyd E. Jones, as provided in said certificate and policy and occurring subsequent to the first day of November, 1935, and up to and including November 1, 1937, in the amount of $25,000.00, over and above and in excess of the coverage afforded to plaintiff by the terms of the primary bond issued to plaintiff by [49] *by* defendant United States Fidelity and Guaranty Company as shown by "Exhibit A" attached to and made a part of plaintiff's complaint.

IV.

Defendant admits the allegations contained in paragraph VIII.

V.

Answering paragraph IX of plaintiff's complaint, this answering defendant admits that on November 15, 1937, this defendant executed and delivered to

plaintiff its excess commercial blanket bond No. 02-308-37 effective as of November 1, 1937, and denies that said bond was executed or delivered prior to the expiry date of the Lloyd's excess blanket fidelity insurance referred to in said paragraph and elsewhere in plaintiff's complaint, and in that connection, alleges that said Lloyd's certificate and policy of excess insurance was at said time, and since has been, in full force and effect as to losses sustained by plaintiff during the period from November 1, 1935 to and including November 1, 1937, and particularly as to the losses alleged to have been sustained by plaintiff between May 1, 1937 and November 1, 1937.

Further answering said paragraph, defendant admits that "Exhibit D" attached to plaintiff's complaint is a photostatic copy of the excess fidelity bond executed by this defendant and of the endorsements and riders thereto attached, but except as herein specifically admitted, denies generally and specifically the remaining allegations of paragraph IX.

VI.

Answering paragraph X, this defendant admits that said Jones was listed as an employee of plaintiff as a loose fruit salesman; this defendant does not have knowledge or information sufficient to enable it to form a belief as to the truth of any of the other allegations of said paragraph X, and basing its denial upon [50] such lack of information and

belief, denies generally and specifically the remaining allegations of said paragraph.

VII.

Answering paragraph XI of the complaint, defendant admits that on or about July 31, 1940, plaintiff notified defendants that plaintiff had discovered that said Floyd E. Jones might not have accounted for moneys received by him on plaintiff's behalf; admits that thereafter, on or about August 15, 1940, plaintiff notified defendants that plaintiff had determined the fact of such claimed defalcations; admits that defendants in writing extended the time for filing proof of loss to November 15, 1940; admits that plaintiff procured an audit of the transactions of said Floyd E. Jones, but defendant alleges that it is without knowledge or information as to the truth, or correctness or falsity of said audit or of the truth of any of the matters and things alleged in said paragraph in said paragraph not herein specifically admitted, and basing its denial upon such lack of information and belief, denies generally and specifically the remaining allegations of said paragraph.

VIII.

Answering paragraph XII of the complaint, defendant admits that on or about October 30, 1940, plaintiff in writing notified defendants of the nature and amount of the claimed defalcations of said Jones during the year 1937 and filed sworn proofs

of loss and copies of the audit referred to in the complaint, but defendant alleges that it is without knowledge or information as to the truth of any of the matters referred to in said notice or proofs of loss, or said audit, and basing its denial upon such lack of information and belief, denies generally and specifically the remaining allegations of said paragraph not herein specifically admitted.

IX.

Defendant admits the allegations contained in paragraphs XIV, XV, and XVI of the complaint.

[51]

X.

Answering paragraph XVII of plaintiff's complaint this answering defendant admits that a controversy has arisen and exists as between the plaintiff and the respective defendants herein as to whether any losses in excess of the sum of One Thousand Dollars, ($1,000.00), were sustained by plaintiff during the period from May 1, 1937 to November 1, 1937, and as to whether such losses, if any, were sustained by reason of the alleged defalcations of said Floyd E. Jones, as an employee of plaintiff, and as to the nature and amount of said losses, if any.

Defendant further admits that a controversy has arisen and exists as between the defendants herein as to whether the liability, if any, to the plaintiff for a sum not exceeding Twenty-Five Thousand Dollars ($25,000.00), for the defalcations, if any,

of said Floyd E. Jones, during the period aforesaid, in excess of the sum of One Thousand Dollars ($1,000.00), rests upon the defendant Underwriting Members of Lloyd's or upon this answering defendant.

Defendant further admits, upon its information and belief, that defendant, Underwriting Members of Lloyd's, contends as alleged in said paragraph XVII of the complaint herein, and admits that defendant, United States Fidelity and Guaranty Company, contends as alleged by plaintiff in said paragraph XVII, and further contends as alleged in the Third Defense set forth in this answer to plaintiff's complaint which said Third Defense is hereby by reference, made a part hereof as fully as if set forth herein in full.

In this connection defendant United States Fidelity and Guaranty Company alleges that said excess losses, if any, claimed by plaintiff herein, occurred, if at all, during the currency of the excess blanket fidelity policy issued by Underwriting Members of Lloyd's to plaintiff, and during the currency of the primary bond executed by this defendant, and prior to the effective date of the [52] excess commercial blanket bond executed by this answering defendant, and that such losses, if any, were discovered during the currency of said primary bond and within three years subsequent to the expiry date of the excess fidelity blanket policy issued by Underwriting Members of Lloyd's, which said policy was not renewed.

Third Defense

I.

Defendant, United States Fidelity and Guaranty Company alleges that the primary fidelity blanket bond executed and delivered to plaintiff by this defendant was and is, a continuous contract in continuous effect from October 23, 1912, to the present time; that the losses claimed to have been sustained by plaintiff occurred (if they, or any of them occurred at all), during the currency of said Primary Bond executed by this answering defendant and during the currency of the excess insurance policy of defendant Underwriting Members of Lloyd's, to-wit, during the period between May 1, 1937, and November 1, 1937.

II.

This answering defendant, upon its information and belief, alleges that on or about November 1, 1935, defendant Underwriting Members of Lloyd's executed and delivered to plaintiff, an excess fidelity blanket policy, which was in full force and effect from November 1, 1935, to November 1, 1936, and which was of the same tenor and effect, as the certificate and policy shown by "Exhibits B and C" attached to the complaint of plaintiff.

III.

(A) The excess fidelity blanket policy issued by defendant Underwriting Members of Lloyd's, and shown by "Exhibit B" attached to plaintiff's com-

plaint, provides in paragraph 1 thereof as shown, at page 26 of the complaint, as follows:

> "1. This policy is to indemnify the assured against all such direct loss as the assured may sustain by reason [53] of the dishonesty of any employees in their employment who are bonded under a Bond or Bonds (hereinafter called Primary Bonds) issued by an approved insurance company, subject to the conditions hereinafter contained."

(B) And in paragraph 2 thereof, shown at page 26 of the complaint of plaintiff, it is provided:—

> "2. It is understood and agreed that such employees are bonded under the aforesaid primary bonds for a total aggregate amount of approximately $972,000.00 and that this policy of Excess Insurance only covers such portion of the ultimate net loss sustained by the Assured in respect of defalcations committed by any such employee subsequent to the 1st day of November, 1935, as shall be in excess of the amount for which such employee is bonded under the said Primary Bonds, provided always that Underwriters' liability in respect of any number of losses shall in no event exceed the sum of $25,000.00 in the aggregate."

(C) And in paragraph 4 thereof, shown at page 26 of the complaint of plaintiff, it is provided:—

> "4. It is further understood and agreed that this excess insurance is subject to all the terms

and conditions of the said Primary Bonds insofar as the same do not conflict with the terms and conditions herein contained, and it is a condition of this Policy that in event of the Underwriters acting as Surety under the said Primary Bonds withdrawing or cancelling their guarantee in respect of any of the employees for any reason the Underwriters hereto shall be automatically relieved of their obligations hereby undertaken as regards the acts of any such employee or employees [54] subsequent to the date of such withdrawal or cancellation."

(D) And in paragraph 5 thereof, shown at page 26 of the complaint of plaintiff, it is provided:—

"5. Warranted Free of All Claim for losses occurring subsequent to the expiry date of this Policy and for losses not discovered during its currency, with the understanding that in event of non-renewal the Assured shall have a period equal to that provided by the Discovery Clause of the aforesaid Primary Bonds (but not exceeding three years) in which to discover losses claimable under this insurance."

IV.

Defendant alleges that where in said policy reference is made to "primary bond", such reference is to the primary bond executed by this answering defendant, as shown by "Exhibit A" attached to

plaintiff's complaint. Said excess fidelity policy issued by defendant Underwriting Members of Lloyd's on or about November 1, 1936 was not renewed subsequent to the 1st day of November, 1937.

V.

That by the terms of the primary bond issued to plaintiff by this answering defendant, no specific time was provided for the discovery of losses thereunder, it being the intent and purpose thereof that losses occurring during its currency within the limits of amount as to each employee of plaintiff, to-wit, the sum of One Thousand Dollars ($1,000.00) as to said Floyd E. Jones, and discovered during the currency of said primary bond, were and should be covered thereby, and pursuant thereto this defendant paid to plaintiff the full amount of the coverage under said primary bond on account of losses claimed to have been sustained by reason of the claimed defalcations of said Floyd E. Jones.

[55]

VI.

At and prior to the time of the issuance of the excess fidelity blanket policy of defendant, Underwriting Members of Lloyd's, on or about November 1, 1935, and at and prior to the time of the issuance of the excess fidelity blanket policy of defendant, Underwriting Members of Lloyd's shown in "Exhibits B and C" attached to plaintiff's complaint, plaintiff herein well knew the terms and

provisions of the primary bond of this answering defendant, and said Underwriting Members of Lloyd's, by and through their agents and representatives who negotiated each of said excess policies with plaintiff, examined said primary bond issued by this answering defendant and well knew its terms and provisions, and particularly well knew that, under the terms and conditions of said primary bond coverage was and is afforded to plaintiff, within the financial limits of said primary bond, for losses sustained by plaintiff and discovered during the currency of said primary bond, and in consideration of the premium paid by plaintiff therefor, intended, and provided that said Underwriting Members of Lloyd's should indemnify and insure plaintiff for losses sustained by plaintiff during the currency of said primary bond and during the currency of the respective excess policies, in a sum not exceeding Twenty-five Thousand Dollars ($25,000.00) in excess of the amounts provided for in said primary bond, intending and providing that said excess insurance should and did apply to such excess losses suffered and sustained by plaintiff as aforesaid and discovered by plaintiff within the period of not exceeding three years from the expiry date of said excess policy shown by "Exhibits B and C" attached to plaintiff's complaint.

VII.

That the losses alleged by plaintiff are alleged by plaintiff to have been sustained during the currency

of said primary bond and during the currency of said excess policy, shown by "Exhibits B and C", to-wit, between May 1, 1937, and November 1, 1937 and said losses [56] if any, are covered by said policy and the Underwriting Members of Lloyd's are liable to plaintiff therefor.

Wherefore, defendant prays that this court determine the controversy existing as between plaintiff and defendant Underwriting Members of Lloyd's and as between plaintiff and this answering defendant and as between defendants Underwriting Members of Lloyd's and this answering defendant, and upon such determination, the court render its judgment exonerating the defendant United States Fidelity and Guaranty Company from any and all liability herein and that defendant recover its costs and disbursements and have such other and further relief as to the court may seem just and proper.

MILLS & WOOD
By EDWARD C. MILLS
Attorneys for defendant,
United States Fidelity and
Guaranty Company.
711 C. C. Chapman Building
756 South Broadway
Los Angeles, California [57]

State of California,
County of Los Angeles—ss.

J. T. Quail, being by me first duly sworn, deposes and says that he is the Superintendent of Claims of the Los Angeles Branch Office of United States Fidelity and Guaranty Company, a corporation, one of the defendants in the above entitled action; that he has read the foregoing Answer and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters that he believes it to be true, and that he makes this verification for and on behalf of said defendant.

J. T. QUAIL

Subscribed and sworn to before me this 9th day of April, 1941.

[Seal] CARLETON B. WOOD
Notary Public in and for the County of Los Angeles, State of California. [58]

Received copy of the within Answer this 10th day of April, 1941.

GEORGE E. FARRAND
EDWARD W. TUTTLE
EDWARD E. TUTTLE
Attorneys for plaintiff.

[Endorsed]: Filed Apr. 15, 1941. [58½]

[Title of District Court and Cause.]

ANSWER OF DEFENDANTS, UNDERWRITING MEMBERS OF LLOYD'S IN LLOYD'S POLICY NUMBER 52342, AND STANLEY GRAHAM BEER, INDIVIDUALLY AND AS REPRESENTATIVE OF THE UNDERWRITING MEMBERS OF LLOYD'S IN LLOYD'S POLICY NUMBER 52342.

Come now the defendants, Underwriting Members of Lloyd's in Lloyd's Policy Number 52342, and Stanley Graham Beer, individually and as representative of the Underwriting Member of Lloyd's in Lloyd's Policy Number 52342, and answering the complaint herein for themselves alone and not for their co-defendant, admit, deny and allege as follows, to-wit:

I.

Defendants admit the allegations contained in Paragraphs I, II, III, IV and V of plaintiff's complaint.

II.

Answering Paragraph VI, these defendants deny that the coverage under the bond attached to the complaint and marked Exhibit "A", together with the endorsements thereon, or any of the provisions thereof, was other or different than as set forth on said Exhibit "A", and except as herein denied, these defendants admit all the allegations of Paragraph VI. [59]

III.

Answering Paragraph VII, these defendants deny that the certificate of insurance, together with the endorsements thereon, annexed to plaintiff's complaint and marked Exhibit "B", or that the certificate of insurance, together with the endorsements thereon, annexed to plaintiff's complaint and marked Exhibit "C", had any other purpose or effect or contained any other terms and conditions or contemplated anything other than is set out and contained in said Exhibits "B" and "C" and each of them, and except as hereinabove specifically denied, these defendants admit all the allegations of said Paragraph VII.

IV.

Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph VIII, and placing their denial upon that ground, deny generally and specifically each and every allegation thereof and the whole thereof.

V.

These defendants admit all the allegations contained in Paragraph IX of the complaint.

VI.

These defendants are without knowledge or information sufficient to form a belief as to the truth of the averments set out and contained in Paragraph X of plaintiff's complaint, and placing

their denial upon that ground, deny generally and specifically each and every allegation thereof and the whole thereof.

VII.

Answering Paragraph XI, these defendants admit that on July 31, 1940, plaintiff notified defendants that plaintiff had discovered that the said Floyd E. Jones might not have accounted for all monies received by him on plaintiff's behalf, for fruit sold by him; admit that thereafter, and on or about August 15, 1940, plaintiff notified defendants that plaintiff had determined the fact of [60] such claimed defalcations; admit that defendants, in writing, extended the time for filing proof of loss to November 15, 1940; and admit that plaintiff procured an audit of the transactions of the said Floyd E. Jones; but defendants are without knowledge or information sufficient to form a belief as to the truth of any of the other averments contained in Paragraph XI, except as herein specifically admitted, and placing their denial upon that ground, deny generally and specifically each and every other remaining allegation of said Paragraph XI, and the whole thereof.

VIII.

Answering Paragraph XII, defendants admit that on or before October 30, 1940, plaintiff, in writing, notified defendants of the nature and amount of the claimed defalcations of the said

Floyd E. Jones during the year 1937, and filed with defendants sworn proofs of loss and copies of the audit referred to in the complaint, but these defendants are without knowledge or information sufficient to form a belief as to the truth of any of the matters referred to in said notice or proofs of loss or said audit, or as to any other matters mentioned in said Paragraph XII not herein specifically admitted, and placing their denial upon that ground, deny generally and specifically each and every allegation thereof and the whole thereof.

IX.

These defendants have no knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraphs XIII, XIV and XVI of plaintiff's complaint, and placing their denial upon that ground, deny generally and specifically each and every allegation thereof and the whole thereof.

X.

Defendants admit all the allegations contained in Paragraph XV of the complaint. [61]

XI.

These defendants admit all the allegations contained in Paragraph XVII of the complaint, but in this behalf further allege that other and further controversies have arisen and exist between plaintiff and the respective defendants herein, as to whether any losses in excess of One Thousand Dol-

lars ($1000.00) were sustained by plaintiff during the period from May 1, 1937, to November 1, 1937, and as to whether such losses, if any, were sustained by reason of any alleged defalcations of the said Floyd E. Jones as an employee of plaintiff, and as to the nature and amount of said losses, if any, and that by admitting such contentions as are set forth in Paragraph XVII, these defendants do not limit their defenses or contentions to the matters therein specified, but allege that all their defenses, however arising, to which they are entitled, have been and were reserved and are herein and hereby reserved, and in this behalf allege further that they contend that they have no liability whatsoever under the certificate of insurance referred to as the Lloyd's policy, and whether arising out of the contentions set forth in Paragraph XVII or otherwise.

For a Further, Separate and Second Defense to plaintiff's complaint herein, these defendants allege:

I.

That the complaint fails to state a cause of action against these defendants, or a claim against these defendants upon which relief can be granted.

Wherefore, defendants pray that the Court determine the controversy herein set forth, and determine that these answering defendants are not liable to the pliantiff for any sum whatsoever, but that the liability to plaintiff, if any there is, rests

upon and is covered by the excess bond of defendant, United States Fidelity and [62] Guaranty Company, a corporation; that plaintiff take nothing as against these defendants by its complaint herein, but that these defendants recover costs and disbursements herein; and for such other and further relief as the Court deems meet and proper in the premises.

CHAS. E. R. FULCHER
Attorney for defendants,
Underwriting Members of
Lloyd's in Lloyd's Policy
Number 52342, and Stanley
Graham Beer, individually
and as representative of
the Underwriting Members
of Lloyd's in Lloyd's Policy
Number 52342. [63]

Received copy of the within Answer this 27th day of May, 1941.

GEORGE E. FARRAND,
EDWARD W. TUTTLE and
EDWARD E. TUTTLE,
By EDWARD E. TUTTLE
(Attorneys for Plaintiff)

[Endorsed]: Filed May 27, 1941. [64]

[Title of District Court and Cause.]

STIPULATION AND ORDER AMENDING COMPLAINT

It Is Hereby Stipulated by and between the plaintiff in the above entitled action and the defendants therein through their respective counsel that the complaint in said action may be amended by plaintiff as follows:

1. To insert a new paragraph to be known as paragraph IX-a immediately following paragraph IX of plaintiff's complaint where it appears on page 5 to read as follows:

> "Thereafter and on November 7, 1938, defendant United States Fidelity and Guaranty Company executed and delivered to plaintiff an excess commercial blanket bond number 14815-02-313-38, which bond provides, among other things, that its term should begin November 1, 1938. On November [65] 7, 1938, said excess commercial blanket bond was modified by four separate written riders executed by said defendant United States Fidelity and Guaranty Company and attached to said excess commercial blanket bond number 14815-02-313-38. On December 4, 1940 and again on February 17, 1941, said bond was further modified by riders executed by said defendant. A photostatic copy of said excess commercial bond and of said riders and of certain letter agreements modifying the same and of certain

certificates of renewal is annexed hereto as Exhibit "E" and made a part hereof by this reference. The purpose and effect of said excess commercial blanket bond as so modified was to insure as therein provided, the fidelity of plaintiff's employees, including said Jones, in the maximum sum of $25,000 over and above the amount of said primary bond and to cover, among other things, as therein provided any misconduct of such employees during the period from November 1, 1936 to November 1, 1937 for which a right of recovery against said defendant Underwriting Members of Lloyd's under its said policy number 52342 and against defendant United States Fidelity and Guaranty Company under said policy number 02-308-37 might be lost because of nondiscovery and lapse of time."

2. To change the word "bond" to "bonds" in paragraph XV of plaintiff's complaint where it appears in line 32 on page 7.

3. To change the word "bond" to "bonds" in paragraph XVI of plaintiff's complaint where it appears in line 10 on page 8 and to insert immediately following the word "Company" where it appears on said line 10, the words "or either of them".

4. To change the word "bond" to "bonds" in paragraph XVII of plaintiff's complaint where it appears in line 21 on page 8 and to insert imme-

diately following said word, the words "or either of them".

5. To strike the words "or the other of" in paragraph XVIII of plaintiff's complaint where it appears in line 28 on [66] page 9 of plaintiff's complaint and in lieu thereof to insert the words "of the three".

It Is Further Stipulated that upon the filing of the foregoing stipulation, plaintiff's complaint shall be deemed amended as provided for in this stipulation.

It Is Further Stipulated that by this stipulation none of said defendants shall be deemed to have waived any of its defenses and that each of the defendants herein shall have ten days after the filing of said amendment within which to amend their respective answers to said complaint.

Dated this 28th day of October, 1941.

GEORGE E. FARRAND
EDWARD W. TUTTLE
EDWARD E. TUTTLE
Attorneys for Plaintiff
MILLS & WOOD
By EDWARD C. MILLS
Attorneys for defendant
United States Fidelity and
Guaranty Company
711 C. C. Chapman Building
756 South Broadway
Los Angeles—Tel: TR 3788

CHAS. E. R. FULCHER
Attorney for defendants
Underwriting Members of
Lloyd's etc., et al.
823 Title Guarantee Building
Los Angeles—MU 5592.

It Is So Ordered

Dated: October 29, 1941.

H. A. HOLLZER,
Judge.

[Endorsed]: Filed Oct. 29, 1941. [67]

EXHIBIT "E"

(Cut)

United States Fidelity and Guaranty Company
Baltimore, Maryland
(A Stock Company)

EXCESS COMMERCIAL BLANKET BOND
(Standard Form AA)

No. 14815-02-313-38

Know All Men by These Presents, that, in consideration of an annual premium, the United States Fidelity and Guaranty Company (hereinafter called Underwriter) hereby agrees to indemnify those designated as Insured in Joint Insured Rider attached hereto as a part hereof of..... (hereinafter called Insured) to an amount not exceeding in the aggregate, for all losses under this

Exhibit "E"—(Continued)

bond, the sum of Twenty-five Thousand dollars ($25,000.00), against That Part of Any Loss which any one or more of the Employees, as defined in Section A, paragraph 2, shall cause to the Insured In Excess of the amount or amounts carried under the primary fidelity suretyship described in Section A, paragraph 3, on the Employee or Employees, respectively, causing such loss, through any act or default covered under said primary fidelity suretyship and not excluded under Section A, paragraph 5, and committed by such Employee or Employees, acting directly or in collusion with others, during the term of this bond as defined in Section A, paragraph 1, and while this bond and said primary fidelity suretyship are in force as to such Employee or Employees, and discovered, as provided in Section B, paragraph 2, and reported to the Underwriter before the expiration of twelve months from the cancellation of this bond as to such Employee or Employees, or from the cancellation of this bond as an entirety as provided in Section A, paragraph 9, or from its cancellation or termination as an entirety in any other manner, whichever shall first happen.

This bond is executed and accepted subject to the agreements and limitations set forth in Section A of this bond, and the conditions set forth in Section B of this bond, which conditions shall be conditions precedent to recovery under this bond.

Exhibit "E"—(Continued)

Section A

Term of Bond

1—The term of this bond begin with the 1st day of November, 1938, standard time at the address of the Insured above given, and ends at 12 o'clock night, standard time as aforesaid, on the effective date of the cancellation of this bond; and the payment of annual premiums during such term shall not render the amount of this bond cumulative from year to year.

Employees Defined

2—The word "Employee" or "Employees," as used in this bond, shall be deemed to mean, respectively, one or more of those natural persons located within any of the States of the United States or within the District of Columbia, the Hawaiian Islands, Alaska, Canada or Newfoundland, who are, on the effective date of this bond, in the service of the Insured and covered by name or position under the existing primary fidelity suretyship listed herein below, and those natural persons so located who shall be, at any time during the term of this bond, in the service of the Insured and covered by name or position under said primary fidelity suretyship, or under additional primary fidelity suretyship hereafter taken out in a company agreed upon in writing between the Insured and the Underwriter. The word "Employee" or "Employees," however, does not mean

Exhibit "E"—(Continued)

firms and corporations nor does it mean brokers, factors, commission merchants, consignees, contractors and agents or representatives of the same general character.

Primary Suretyship

3—The existing primary fidelity suretyship is as follows

Schedule Bond No. 14814-03-62-12—issued by the Underwriter in favor of the Insured.....

[68]

Primary Suretyship—Continued

(a) The Insured must, throughout each premium year of the term of this bond, carry under said primary fidelity suretyship on each Employee covered thereunder at the beginning of such premium year not less than the amount carried under said primary fidelity suretyship on such Employee at the beginning of such premium year, and agreed upon by the Insured and the Underwriter as the minimum amount to be carried on such Employee, and must, in case any successor be named during any premium year for any Employee, carry under said primary fidelity suretyship on such successor, throughout the remainder of such premium year, not less than the amount carried under said primary fidelity suretyship on the Employee so succeeded. If, during any premium year the Insured shall cover under said primary fidelity suretyship any natural person but not as the successor of any

Exhibit "E"—(Continued)

Employee, and shall desire such person to be covered under this bond, the Insured must carry under said primary fidelity suretyship on such person throughout the remainder of such premium year not less than the amount to be agreed upon in writing between the Insured and the Underwriter. (b) If the Insured shall reduce the amount of primary fidelity suretyship required by this bond to be carried on any Employee, the Underwriter shall be liable on account of loss caused by such Employee, only in case such loss be in excess of the amount so required to be carried, and then for not more than such excess. If the Insured shall increase the amount of primary fidelity suretyship required by this bond to be carried on any Employee the Underwriter shall be liable on account of loss caused by such Employee through any act or default committed after the date of such increase, only in case such loss be in excess of such increased amount, and then for not more than such excess.

Merger or Consolidation

4—If any natural persons shall be taken into the service of the Insured, through merger or consolidation with some other concern, the Insured shall give the Underwriter written notice thereof. If the persons so taken into the service of the Insured be covered under primary fidelity suretyship, in accordance with the provisions of paragraphs 2 and 3 of Section A of this bond, and if as a result there-

Exhibit "E"—(Continued)

of there be an increase in the number of Employees covered under this bond, then the Insured shall pay to the Underwriter an additional premium computed pro rata from the date of such merger or consolidation to the end of the current premium year.

Excess Suretyship

5—(a) If said primary fidelity suretyship gives coverage or indemnity against losses caused by acts or defaults broader than larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, wilful misapplication or other fraudulent or dishonest acts, this bond, notwithstanding such broader coverage or indemnity shall be liable only in case any Employee or Employees shall cause an excess loss or losses under said primary fidelity suretyship through larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, wilful misapplication or other fraudulent or dishonest acts, and then for not more than such excess. (b) If said primary fidelity suretyship limits liability for loss to the loss of certain designated classes or kinds of property, then this bond shall be liable only in case such loss or losses as aforesaid are of such designated property, and then for not more than such excess. (c) If the time limits specified in said primary fidelity suretyship for discovery of, or making claim for, loss after the expiration, termination or cancellation thereof as an entirety, or for filing notice of loss, for filing proof

Exhibit "E"—(Continued)

of loss or for bringing suit are less than the corresponding time limits in this bond, then this bond shall be subject to the time limits specified in said primary fidelity suretyship as if written herein. (d) If the time limit specified in said primary fidelity suretyship for discovery of, or making claim for, or for filing proof of loss for, loss after the happening of any of the events specified in Section A, paragraph 8, be greater or less than the corresponding time limit in this bond, then this bond shall be subject to the time limit specified in said primary fidelity suretyship as if written herein, provided, however, that in no event shall the time for discovery of, or making claim for, or for filing proof of loss for, any such loss be extended beyond the time within which, under the terms of this bond, losses must be discovered or claims must be made or proof of loss filed after the cancellation hereof as an entirety. (e) If said primary fidelity suretyship contains any deductible or any limitation, condition or warranty, other than those above mentioned, which is not inconsistent with any such limitation, condition or warranty in this bond, then this bond shall be subject to such deductible or to such limitation, condition or warranty as if written herein.

Deductions and Reinstatement

6—Any sum paid in settlement of any loss under this bond shall be deducted from the amount of this

Exhibit "E"—(Continued)

bond, such deduction to be effective as of the date upon which the Insured sends to the Underwriter notice of such loss, and only the remainder of such amount shall apply to other losses resulting from acts or defaults covered by this bond whether committed on or before said date or thereafter, or partly before and partly thereafter. The sum so deducted shall be automatically restored as of said date but only as to losses resulting from acts or defaults covered by this bond which shall be committed thereafter; and in consideration of such restoration the Insured shall pay to the Underwriter, on demand, an additional premium computed pro rata upon the sum so restored from said date of restoration to the end of the premium year. In no event shall the Underwriter be liable under this bond for an amount greater than that specified in line 6 of this bond on account of any one loss or series of losses caused by any Employee or combination of Employees.

Disposition of Salvage

7—In case any reimbursement be obtained or recovery be made by the Insured or the Underwriter on account of any loss covered under this bond, the net amount of such reimbursement or recovery after deducting the actual cost of obtaining or making the same, shall be applied to reimburse the Insured in full for that part, if any, of such loss in excess of the aggregate of the amounts of all

Exhibit "E"—(Continued)

bonds, insurance and indemnity, including this bond, taken by or for the benefit of the Insured and covering such loss, plus the amount of any deductible applicable to such loss, and the balance, if any, or the entire net reimbursement or recovery, if there be no such excess loss, shall be applied to that part of such loss covered by this bond, or, if payment shall have been made by the Underwriter, to its reimbursement therefor. The Insured shall execute all necessary papers and render all assistance, not pecuniary, to secure unto the Underwriter the rights provided for in this paragraph. The following shall not be reimbursement or recovery within the meaning of this paragraph: suretyship, insurance or reinsurance; also security or indemnity taken from any source by or for the benefit of the Underwriter.

Cancellation As To Employees

8—This bond shall be deemed cancelled as to any Employee: (a) immediately upon discovery by the Insured, or, if the Insured be a copartnership, by any partner thereof, or, if the Insured be a Corporation, by [69] any officer thereof not in collusion with such Employee, of any fraudulent or dishonest act on the part of such Employee; (b) upon the effective date of the termination or cancellation of said primary fidelity suretyship as to such Employee or as to the position filled by such Employee; (c) at 12 o'clock night, standard time as aforesaid,

Exhibit "E"—(Continued)

upon the effective date specified in a written notice served upon the Insured or sent by registered mail. Such last mentioned date, if the notice be served, shall be not less than fifteen days after such service, or if sent by registered mail, not less than twenty days after the date borne by the sender's registry receipt.

Cancellation As To Bond In Its Entirety

9—This bond shall be deemed cancelled as an entirety: (a) upon the effective date of the termination or cancellation of said primary fidelity suretyship; (b) at 12 o'clock night standard time as aforesaid, upon the effective date specified in a written notice served by the Insured upon the Underwriter or by the Underwriter upon the Insured, or sent by registered mail. Such last mentioned date, if the notice be served by the Underwriter, shall be not less than thirty days after such service, or, if sent by the Underwriter by registered mail, not less than thirty-five days after the date borne by the sender's registry receipt. The Underwriter shall, on request, refund to the Insured the unearned premium computed pro rata if this bond be cancelled by notice from, or at the instance of, the Underwriter, or at short rates if cancelled by notice from, or at the instance of, the Insured, but in case of payment of a loss under this bond, that proportion of such return premium as the amount of loss paid bears to the amount of this bond, shall be repaid to the Underwriter.

Exhibit "E"—(Continued)

Section B

Prior Fraud Or Dishonesty

1—No Employee, to the best of the knowledge of the Insured, or, if the Insured be a copartnership, of any partner thereof, or, if the Insured be a corporation, of any officer thereof not in collusion with such Employee, has committed any fraudulent or dishonest act in any position in the service of the Insured or otherwise.

Notice To Underwriter

2—The Insured shall notify the Underwriter by telegram or registered letter addressed and sent to it as its branch office in the City of Los Angeles, California, of any act or default on the part of any Employee which may involve a loss hereunder at the earliest practicable moment, and at all events not later than fifteen days after discovery thereof by the Insured, or, if the Insured be a copartnership, by any partner thereof, or, if the Insured be a corporation, by any officer thereof not in collusion with such Employee.

Proof Of Loss

3—Within four months after discovery as aforesaid of any act or default committed by any Employee and causing loss covered by this bond the Insured shall file with the Underwriter affirmative proof of loss, itemized and duly sworn to, with the name of such Employee, and shall, if requested by

Exhibit "E"—(Continued)

the Underwriter, produce from time to time, for examination by its representatives, all books, documents and records pertaining to such loss.

Time Limit For Suit

4—No suit to recover on account of loss under this bond shall be brought before the expiration of two months from the filing of proof as aforesaid on account of such loss, nor after the expiration of fifteen months from discovery as aforesaid of the fraudulent or dishonest act causing such loss.

Statutory Limitation

5—If any limitation in this bond for giving notice, filing claim or bringing suit is prohibited or made void by any law controlling the construction of this bond, such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

Signed, sealed and dated this 7th day of November, 1938.

UNITED STATES FIDELITY
AND GUARANTY COMPANY
[Illegible]
Vice President
[Illegible]
Assistant Secretary. [70]

Exhibit "E"—(Continued)

United States Fidelity and Guaranty Company

Baltimore, Maryland

(A Stock Company)

(Cut)

RIDER

To be attached to and form a part of Excess Commercial Blanket Bond No. 14815-06-313-38 issued by the United States Fidelity and Guaranty Company, in favor of California Fruit Growers Exchange, Et Al, in the amount of Twenty Five Thousand Dollars ($25,000.00), effective the 1st day of November 1938, and subsequently increased to Fifty thousand Dollars ($50,000.00) by rider effective the 1st day of November 1940.

In consideration of an additional premium charged for the attached bond it is hereby understood and agreed as follows:

1. Paragraph 2 of Section A of the attached bond shall be and the same is hereby amended by deleting the word "or" between "Canada" and "Newfoundland" and substituting therefore a comma, and by inserting after "Newfoundland" the following:

or *Phillipine* Islands,

2. The attached bond shall be subject to all its agreements, limitations and conditions except as herein expressly modified.

3. This rider shall become effective as of the beginning of the 15th day of February, 1941, standard time as specified in the attached bond.

Exhibit "E"—(Continued)

Signed, sealed and dated this 17th day of February, 1941.

UNITED STATES FIDELITY
AND GUARANTY COMPANY
T. HARTLEY MARSHALL
Vice President
[Illegible]
Assistant Secretary. [72]

R 2/25/41

United States Fidelity and Guaranty Company
Los Angeles Office
H. C. Gillespie, Manager
H. V. D. Johns, Associate Manager
111 West Seventh Street
Los Angeles, Calif.
Telephone: Trinity 3651

In Reply, Please Refer to Mr.....
and Quote Our File Number

This Is to Certify, that Excess Commercial Blanket Bond No. 14815-06-313-38 issued by the Undersigned dated the 1st day of November 1938, in the amount of Twenty-five Thousand & no/100 Dollars ($25,000.00) and in favor of California Fruit Growers Exchange, et al covers an indefinite term beginning on the 1st day of November, 1938, and ending with the cancellation of said bond; that said bond is now in full force and effect and will continue in full force and effect until cancelled.

Exhibit "E"—(Continued)

Signed, Sealed and Dated this 1st day of November, 1940.

UNITED STATES FIDELITY
AND GUARANTY COMPANY
By J. ST. PAUL WHITE
Attorney-in-fact. [73]

(Cut)

Increase Rider—For Primary or Excess Commercial Blanket Bonds, with prospective restoration.
United States Fidelity and Guaranty Company
Baltimore - Maryland
(A Stock Company)

RIDER

To be attached to and form a part of Excess Commercial Blanket Bond No. 14815-06-313-38, issued by the United States Fidelity and Guaranty Company, of Baltimore, Md. (hereinafter called Underwriter), in the amount of Twentyfive Thousand Dollars ($25,000.00), in favor of California Fruit Growers Exchange, et al (hereinafter called Insured), effective the 1st day of November, 1938.

Whereas, the Insured and the Underwriter have mutually agreed to increase the amount of the attached bond as hereinafter set forth;

Now, Therefore, in consideration of the increased premium charged for the attached bond in its increased amount, it is mutually understood and agreed as follows:

Exhibit "E"—(Continued)

1—That, subject to all the terms, conditions and limitations of the attached bond, the amount thereof shall be, and the same is hereby, increased to Fifty Thousand Dollars ($50,000.00) as to all direct losses resulting from acts or defaults covered by the attached bond which shall be committed after the 1st day of November, 1940.

2—That any sum hereafter paid on account of any loss resulting from acts or defaults committed either before or after said last mentioned date shall be deducted from any amount of the attached bond applicable at the time of notice to the Underwriter of the loss so paid to losses resulting from acts or defaults committed prior to said date, and also from the amount to which the attached bond is increased by this rider; but any sum so deducted from the latter amount shall be restored thereto as provided in the attached bond.

Signed,, sealed and dated this 4th day of December, 1940.

UNITED STATES FIDELITY AND GUARANTY COMPANY

T. HARTLEY MARSHALL
Vice-President

[Illegible]
Assistant Secretary [74]

Exhibit "E"—(Continued)
(Cut)

United States Fidelity and Guaranty Company
Baltimore, Maryland

September 25, 1940.

California Fruit Growers Exchange,
Los Angeles, California
Gentlemen:

Re: Excess Commercial Blanket Bond
#14815-02-313-38—

It is hereby understood and agreed that the letter we addressed you on September 18, 1940 under the above caption is effective November 1, 1937 so as to apply to Excess Commercial Blanket Bond #14815-02-313-38 and the superseded Excess Commercial Blanket Bond #14815-02-308-37 from the effective date to the cancel*a*tion date of each of the said bonds.

Very truly yours,
UNITED STATES FIDELITY AND GUARANTY COMPANY
[llegible]
Assistant Secretary.

R 10/7/40. [75]

Exhibit "E"—(Continued)
(Cut)

J. St. Paul White
Agent
United States Fidelity and Guaranty Company
Telephones: Trinity 7888 and Trinity 7889
365 Paramount Bldg.
Los Angeles, California

October 7, 1940

Mr. R. S. Hayslip, Asst. Secretary
California Fruit Growers Exchange
707 West Fifth Street
Los Angeles, California

Excess Commercial Blanket Bond
#14815-02-313-38

Dear Mr. Hayslip:

I enclose an original letter of September 18th addressed to you from the Home Office of USF&G Company, interpreting paragraph 3, section A of your above excess blanket bond to permit changes in the amounts of bond items in your underlying schedule Bond #14815-03-62-12.

Original letter of September 25th addressed to you from the Home Office of the Company, also enclosed, extends this interpretation under the existing blanket bond #14815-02-308-37 which ran for the year November 1, 1937, to November 1, 1938.

This, I believe, will satisfactorily adjust the question of changes in the underlying bonds which

Exhibit "E"—(Continued)

we discussed a short time ago. I suggest that the enclosed letters be attached to the bonds.

Very truly yours,

J. ST. PAUL WHITE

Enc. 2
W:M [76]

(Cut)

United States Fidelity and Guaranty Company
Baltimore, Maryland

September 18, 1940

California Fruit Growers Exchange,
Los Angeles, California
Gentlemen:

Re: Excess Commercial Blanket Bond
No. 14815-02-313-38

Paragraph 3 of Section A of this bond requires you to:—

1. Maintain at least the same amount of primary fidelity suretyship throughout a premium year as agreed upon for each Employee at the outset of the premium year as applicable to each such Employee or his successor.

2. Bond any Employee newly bonded at any time during the premium year under the primary fidelity suretyship, other than as successor of any bonded Employee, in at least such amount for the remainder of the premium year as is agreed upon.

Exhibit "E"—(Continued)

We agree that any changes which may be made at any time during any premium year under the primary fidelity suretyship, whether involving the reduction in amount of bond of any bonded Employee or successor, or the bonding of any Employee who was not bonded at the outset of any premium year, are automatically regarded as agreed upon in compliance with the requirements of Paragraph 3 of Section A of the bond.

We further agree that in automatically regarding as so agreed upon the reduction in amount of bond of any bonded Employee or successor, it is understood that this bond will then cover and apply as excess of any such reduced amount as and from the effective date of any such reduction.

The foregoing is intended to apply to ordinary routine changes made during the premium year under the primary fidelity suretyship, and is not intended to apply in the case of any general scale revision of the amounts agreed upon at the beginning of the premium year.

Yours very truly,

J. V. RICHARDSON

Assistant Secretary

R 10/7/40. [77]

Exhibit "E"—(Continued)

(Cut)

United States Fidelity and Guaranty Company
Los Angeles Office

H. C. Gillespie, Manager
H. V. D. Johns, Associate Manager
111 West Seventh Street
Los Angeles, Calif.
Telephone: Trinity 3651

In Reply, Please Refer to Mr..... and Quote Our File Number.

This Is to Certify, that Excess Commercial Blanket Bond No. 14815-02-313-38 issued by the Undersigned dated the 1st day of November 1938, in the amount of Twenty-five Thousand & no/100 Dollars ($25,000.00) and in favor of California Fruit Growers Exchange, et al covers an indefinite term beginning on the 1st day of November, 1938, and ending with the cancellation of said bond; that said bond is now in full force and effect and will continue in full force and effect until cancelled.

Signed, Sealed and Dated this 1st day of November, 1939.

UNITED STATES FIDELITY
AND GUARANTY COMPANY
By J. ST. PAUL WHITE
Attorney-in-fact. [78]

Exhibit "E"—(Continued)

(Cut)

Superseded Suretyship Rider—F.
Same Company

Superseded Suretyship Rider for Primary Commercial Blanket Bond which supersedes Primary Commercial Blanket Bond, both bonds by same company; or for Excess Commercial Blanket Bond which supersedes Excess Commercial Blanket Bond, both bonds by same company.

United States Fidelity and Guaranty Company
Baltimore, Maryland
(A Stock Company)

RIDER

To be attached to and form a part of Excess Commercial Blanket Bond No. 14815-02-313-38 issued by the United States Fidelity and Guaranty Company, of Baltimore, Md., in the amount of Twenty-five Thousand dollars ($25,000.00), in favor of California Fruit Growers Exchange, Et Al (hereinafter called Insured), and dated the 1st day of November, 1938.

Whereas, the said United States Fidelity and Guaranty Company issues Excess Commercial Blanket Bond No. 14815-02-308-37 (hereinafter called prior bond), dated the 1st day of November, 1937, in the amount of Twenty-five Thousand dollars ($25,000.00), and in favor of the Insured; and

Whereas, the prior bond, as of the effective date

Exhibit "E"—(Continued)

of the attached bond, has been cancelled or terminated by notice or agreement, as is evidenced by the issuance and acceptance of the attached bond and this rider;

Now, Therefore, it is hereby understood and agreed as follows:

1. That the attached bond shall be construed to cover, subject to its terms, conditions and limitations, any loss or losses under the prior bond which shall be discovered after the expiration of the time limited therein for the discovery of loss thereunder, and before the expiration of the time limited in the attached bond for the discovery of loss thereunder; provided that such loss or losses would have been recoverable under the prior bond had it not been cancelled or terminated; and provided further that the acts or defaults causing such loss or losses be such as are covered under the attached bond on its effective date.

2. That nothing in the attached bond or this rider contained shall be construed as increasing the time for discovery of any loss or losses under the prior bond beyond what would have been the time for such discovery had the prior bond not been cancelled or terminated.

3. That liability under the attached bond as extended by this rider on account of loss or losses under the prior bond shall not exceed the amount of the attached bond on its effective date less all deductions on account of all payments made under

Exhibit "E"—(Continued)

the attached bond and the attached bond as extended by this rider, or the amount which would have been recoverable under the prior bond on account of such loss or losses had the prior bond not been cancelled or terminated, if the latter amount be the smaller.

4. That liability under the prior bond and the attached bond shall not be cumulative in amounts, and to that end losses under the prior bond shall be paid first; and any sum or sums which shall be paid under the attached bond shall be deducted from the amount of the prior bond, and any sum or sums which shall be paid under the prior bond and/or under the attached bond as extended by this rider on account of any loss or losses under the prior bond shall reduce or be deducted from the amount of the attached bond in the same manner and subject to the same conditions and limitations as payments under the attached bond, but any sum or sums so reducing or deducted from the amount of the attached bond shall be restored thereto as therein provided.

Signed, sealed and dated this 7th day of November, 1938.

UNITED STATES FIDELITY
AND GUARANTY COMPANY

[Illegible]
Vice President

[Illegible]
Assistant Secretary

Exhibit "E"—(Continued)

Accepted: CALIFORNIA FRUIT GROWERS EXCHANGE, ET AL

By [Illegible] [79]

For use on ordinary Commercial Blanket Bond when written for two or more as Employer

United States Fidelity and Guaranty Company
Baltimore - Maryland
(A Stock Company)
(Cut)

JOINT INSURED RIDER

To be attached to and form a part of Excess Commercial Blanket Bond No. 14815-02-313-38 issued by the United States Fidelity and Guaranty Company, hereinafter called Underwriter, in favor of those hereinafter designated as Insured in the amount of Twenty-five Thousand Dollars ($25,000.00), and dated the 1st day of November, 1938.

In consideration of the premium charged for the attached bond it is understood and agreed, anything in the attached bond to the contrary notwithstanding, as follows:

1—That from and after the time this rider becomes effective the following are covered under the attached bond and designated as Insured

California Fruit Growers Exchange
Blessing Electric and Manufacturing Company
California Fruit Exchange
The Exchange Orange Products Company
Exchange Lemon Products Company

Exhibit "E"—(Continued)

2—That notice cancelling the attached bond as an entirety, or as to any or all of those designated as Insured or as to any Employee shall be given as provided therein either by the Insured first named in the paragraph hereof numbered 1 or the Underwriter to the other, as the case maye be.

3—That the attached bond shall be deemed cancelled as to any Employee immediately upon discovery by any Insured, or by any partner of any Insured, if a partnership, or by any officer of any Insured, if a corporation, not in collusion with such Employee of any fraudulent or dishonest act on the part of such Employee.

4—That the Insured first named in the paragraph hereof of numbered 1 shall, in accordance with the provisions of the attached bond and within the time therein specified after discovery by any Insured, or by any partner of any Insured, if a partnership, or by any officer of any Insured, if a corporation, not in collusion with such Employee, of any act or default on the part of any Employee which may involve a loss under the attached bond, give notice to, and furnish proof of loss to, the Underwriter, bring legal proceedings for its own account or as trustee for any Insured sustaining any loss, make adjustments and settlements on account of any loss and receive payment therefor in its own name, and any payment so made to the Insured first named in the paragraph hereof numbered 1 shall fully release the Underwriter on account of the so loss paid.

Exhibit "E"—(Continued)

5—That regardless of the number of years the attached bond shall continue in force and of the number of premiums which shall be payable or paid, the Underwriter shall not be liable under the attached bond, whether to one or more of those covered under the attached bond as Insured, including those designated above and those heretofore and those hereafter covered as Insured, for more in the aggregate than the amount set forth in line 10 of the attached bond, subject nevertheless to sub-section 6 of Section A thereof.

6—That the Underwriter may, at the request of, or with the consent of, the Insured first named in the paragraph hereof numbered 1, add to the list of those designated as Insured, increase or decrease the amount of the attached bond, issue any rider or riders to form a part thereof and/or cancel or annul any of the riders attached or to be attached thereto.

7—That if the attached bond be cancelled as an entirety as herein provided, or in any other manner, there shall be no liability under the attached bond on account of any loss unless discovered before the expiration of twelve months from such cancellation, and that if prior to the cancellation of the attached bond as an entirety, the attached bond be cancelled as herein provided, as to any Employee, or be cancelled as to any Insured as herein provided or in any other manner, there shall be no liability under the attached bond on account of any loss caused by such Employee or sustained by such

Exhibit "E"—(Continued)

Insured unless discovered before the expiration of twelve months from such cancellation as to such Employee or as to such Insured, as the case may be.

8—That the attached bond shall be subject to all its agreements, limitations and conditions except as modified in, or in accordance with, this rider.

9—That this rider shall be effective on and after the 1st day of November 1938, standard time, at the main office of the Insured first named in the paragraph hereof numbered 1.

Signed, sealed and dated this 7th day of November, 1938.

UNITED STATES FIDELITY AND GUARANTY COMPANY

[Illegible]

Vice President

[Illegible]

Assistant Secretary

Accepted for itself and all other Insureds covered under the attached bond:

CALIFORNIA FRUIT GROWERS EXCHANGE

By [Illegible] [80]

Rider

To be attached to and form a part of Excess Commercial Blanket Bond No. 14815-02-313-38 issued by the United States Fidelity and Guaranty Company, Underwriter, in favor of California Fruit Growers Exchange, Et Al, Insured, in the amount of Twenty-five Thousand Dollars ($25,-

Exhibit "E"—(Continued)

000.000) and dated the 1st day of November, 1938.

It is hereby understood and agreed that, notwithstanding any provision to the contrary of the bond to which this rider is attached, in case a loss is alleged to have been caused by the fraud or dishonesty of one or more of a group of employees, all of whom are covered under the attached bond, and the insured shall be unable to designate the specific employee or employees causing such loss, the insured shall nevertheless have the benefit of the attached bond, provided that the evidence submitted reasonably establishes that the loss was in fact due to the fraud or dishonesty of one or more of the said employees of the said group, and provided further that the liability of the underwriter for any such loss shall not exceed in the aggregate the sum of Twenty-five Thousand Dollars ($25,000.00).

The attached bond shall be subject to all its terms, agreements, limitations and conditions except as herein expressly modified.

This rider shall be effective on and after the 1st day of November, 1938.

Signed, sealed and dated this 7th day of November, 1938.

UNITED STATES FIDELITY
AND GUARANTY COMPANY

[Illegible]
Vice President

[Illegible]
Assistant Secretary

Exhibit "E"—(Continued)

Accepted:

CALIFORNIA FRUIT GROWERS EXCHANGE, ET AL

By [Illegible] [81]

Rider

To be attached to and form a part of Excess Commercial Blanket Bond No. 14815-02-313-38 issued by the United States Fidelity and Guaranty Company, Underwriter, in favor of California Fruit Growers Exchange, Et Al, Insured, in the amount of Twenty-five Thousand Dollars ($25,-000.00), and dated the 1st day of November, 1938.

It is hereby understood and agreed that, notwithstanding any provision to the contrary of the bond to which this rider is attached, the underwriter will not claim salvage nor will it require the insured to apply as salvage or in reduction of any loss or claim under said bond, any payments of premium or of income, dividends, loan proceeds, cash values, interest, or any other moneys accruing or received on account of the insurance plan for employees known as the Sunkist Provident Plan; that insofar as the rights of the underwriter under said bond are concerned no claim for loss arising under said bond shall in any way be reduced or otherwise affected by the operation or existence of the said Sunkist Provident Plan, or any payments of premium or of income, dividends, loan proceeds, cash values, interest, or any other moneys accruing or received on account thereof.

The attached bond shall be subject to all its

Exhibit "E"—(Continued)

terms, agreements, limitations and conditions except as herein expressly modified.

This rider shall be effective on and after the 1st day of November, 1938.

Signed, sealed and dated this 7th day of November, 1938.

UNITED STATES FIDELITY AND GUARANTY COMPANY

[Illegible]

Vice President

[Illegible]

Assistant Secretary. [82]

[Endorsed]: Filed Oct. 29, 1941. [83]

[Title of District Court and Cause.]

NOTICE OF FILING STIPULATION AND ORDER FOR AMENDMENT TO COMPLAINT

To: Defendant United States Fidelity and Guaranty Company, a corporation, and to Mills & Wood, its attorneys; and to Defendants Underwriting Members of Lloyd's in Lloyd's Policy Number 52342 and Stanley Graham Beer, individually and as representative of the Underwriting Members of Lloyd's in Lloyd's Policy Number 52342, and to Chas. E. R. Fulcher, their attorney:

You, and Each of You, will please take notice that on Wednesday, October 29, 1941, the stipula-

tion providing, among other things, for the amendment of plaintiff's complaint, made and entered into by and between the parties to the above action through their [84] respective counsel on October 28, 1941, was presented to the Hon. H. A. Hollzer, Judge of the above entitled court, and that on said date said Judge signed the order attached to said stipulation ordering said stipulation filed and ordering that upon the filing of said stipulation, plaintiff's complaint should be deemed amended as provided for in said stipulation. Thereafter, and on said October 29, 1941, said stipulation and order was filed with the clerk of said court.

You, and Each of You, are further notified that in accordance with the provisions of said stipulation and order defendants herein shall have ten days from said October 29, 1941 within which to amend their respective answers to said complaint.

Dated: October 30, 1941.

GEORGE E. FARRAND
EDWARD W. TUTTLE
EDWARD E. TUTTLE
Attorneys for Plaintiff. [85]

Received copy of the within Notice this 30 day of October, 1941.

CHAS. E. R. FULCHER
Attorney for Defendants
Underwriting Members,
etc., et al.

Received copy of the within Notice of Filing this 30 day of October, 1941.

MILLS & WOOD
By EDWARD C. MILLS
Attorneys for Defendant
United States Fidelity &
Guaranty Co.

[Endorsed]: Filed Oct. 31, 1941. [86]

[Title of District Court and Cause.]

AMENDED ANSWER OF UNITED STATES FIDELITY AND GUARANTY COMPANY

Comes now United States Fidelity and Guaranty Company, a corporation, and makes this its amended answer to the complaint of plaintiff as amended.

I.

Defendant admits the allegations contained in paragraph XV and XVI of plaintiff's complaint, as amended.

II.

Answering paragraph XVII of plaintiff's complaint, as amended, defendant reiterates its original answer to said paragraph, and further in that behalf, allege that other and further controversies have arisen and exist as to whether any losses in excess of One Thousand Dollars were sustained by plaintiff during the period from May 1, 1937, to

November 1, 1937, and as to whether such losses were sustained by reason of any defalcation of said Floyd E. Jones, as an employee of plaintiff, and as to the nature and amount of said losses, if any, and that defendant, by its admissions herein, does [87] not limit its defenses or contentions to the matters alleged in said paragraph XVII of the complaint, but allege that all its defenses, however arising, to which it is entitled, have been and were reserved, and defendant contends that it has no liability under either or any of the bonds issued by it, whether arising out of the contentions set forth in paragraph XVII or otherwise.

III.

Answering paragraph IXa of plaintiff's complaint, as amended, defendant admits that on November 7, 1938, this defendant executed and delivered to plaintiff an excess commercial blanket bond, number 14815-02-313-38: Admits that said bond and the several endorsements and riders thereon were and are in substance and form as shown by the photostatic copies thereof and the endorsements and riders thereon, attached to and made a part of plaintiff's amendment to its complaint herein, and admits that the purpose and effect of said bond and the endorsement and riders thereon, as shown by said photostats, was and is as provided therein and not otherwise, and save and except as herein specifically admitted, defendant denies generally and specifically, each and every allegation contained in said paragraph.

Wherefore, defendant reiterates the prayer of its original answer herein.

MILLS & WOOD
By EDWARD C. MILLS
Attorneys for Defendant.

[88]

State of California
County of Los Angeles—ss.

J. T. Quail, being by me first duly sworn, deposes and says: That he is Superintendent of Claims for United States Fidelity and Guaranty Company, and this verification is made by affiant for the reason that said company is a corporation; that none of the officers are within the County of Los Angeles, and that affiant is an employee of said corporation who has investigated and has knowledge of the facts alleged in the within amended answer of United States Fidelity and Guaranty Company in the above entitled action; that he has read the foregoing Amended Answer and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters that he believes it to be true.

J. T. QUAIL.

Subscribed and sworn to before me this 4 day of November, 1941.

CARLETON B. WOOD
Notary Public in and for said County and State.

[89]

Received copy of the within amended answer this 6th day of November, 1941.

GEORGE E. FARRAND
EDWARD E. TUTTLE
EDWARD W. TUTTLE
By STEPHEN M. FARRAND
Attorneys for Plaintiff.

[Endorsed]: Filed Nov. 6, 1941. [90]

[Title of District Court and Cause.]

ANSWER OF DEFENDANTS, UNDERWRITING MEMBERS OF LLOYD'S IN LLOYD'S POLICY NUMBER 52342, and STANLEY GRAHAM BEER, individually and as representative of the Underwriting Members of Lloyd's in Lloyd's Policy Number 52342, TO AMENDMENT TO COMPLAINT

Come now the defendants, Underwriting Members of Lloyd's in Lloyd's Policy Number 52342, and Stanley Graham Beer, individually and as representative of the Underwriting Members of Lloyd's in Lloyd's Policy Number 52342, and answering the amendment to complaint herein, heretofore filed on or about October 29, 1941, in pursuance of a stipulation between the parties,—for themselves alone and not for their co-defendant, admit, deny and allege as follows, to-wit:

I.

Admit all the allegations contained in Paragraph IX-a.

II.

Answering all the other allegations of amendment, these defendants refer to and incorporate herein as though here set out in full, each and all of the allegations set out and contained in these defendants' answer to the complaint herein.

Wherefore, defendants pray that the controversy herein set forth be determined by the Court, and that the Court determine [91] that these answering defendants are not liable to plaintiff for any sum whatsoever, but that the liability to plaintiff, if any there is, rests upon and is covered by the excess bonds of defendant, United States Fidelity and Guaranty Company, a corporation; that plaintiff take nothing as against these defendants by its complaint and amendment thereto, but that these defendants recover costs and disbursements herein; and for such other and further relief as the Court deems meet and proper in the premises.

CHAS. E. R. FULCHER

Attorney for defendants,
Underwriting Members of
Lloyd's in Lloyd's Policy
Number 52342, and Stanley
Graham Beer, individually
and as representative of the
Underwriting Members of
Lloyd's in Lloyd's Policy
Number 52342. [92]

Received Copy of the within Answer to Amendment to Complaint, this 7th day of November, 1941.

GEORGE E. FARRAND,
EDWARD W. TUTTLE and
EDWARD E. TUTTLE,
By STEPHEN M. FARRAND
Attorneys for Plaintiff.

[Endorsed]: Filed Nov. 7, 1941. [93]

[Title of District Court and Cause.]

STIPULATION AS TO CERTAIN FACTS

It Is Hereby Stipulated by and between plaintiff and defendant United States Fidelity and Guaranty Company, a corporation, said defendant being sometimes hereinafter referred to as "stipulating defendant" as follows:

1. (a) Whenever in this stipulation reference is made to "Primary Bond", it shall be deemed to refer to that certain bond issued by United States Fidelity and Guaranty Company to plaintiff under date of October 23, 1912, being Bond No. 603-12, a copy of which bond is attached to plaintiff's complaint as Exhibit "A".

(b) Whenever in this stipulation reference is made to "1937 bond", it shall be deemed to refer to that certain excess commercial blanket bond issued by United States Fidelity and [94] Guaranty Company to plaintiff, being bond No. 02-308-37 as amended and modified by certain written riders attached thereto, a copy of which bond and riders is

attached to plaintiff's complaint as Exhibit "D". Whenever in this stipulation reference is made to "1938 bond", it shall be deemed to refer to that certain excess commercial blanket bond issued by United States Fidelity and Guaranty Company to plaintiff, being bond No. 14815-02-313-38 as amended and modified by certain written riders attached thereto, a copy of which bond and riders is attached to plaintiff's complaint as amended as Exhibit "E". Said 1937 bond and said 1938 bond are sometimes herein collectively referred to as "excess bonds".

(c) Whenever in this stipulation reference is made to "Audit Report", it shall be deemed to refer to the audit report of Fuller, Eadie & Payne dated October 28, 1940, addressed to plaintiff.

(d) Whenever in this stipulation reference is made to "Lloyd's", it shall be deemed to refer to defendant Underwriting Members of Lloyd's in Lloyd's Policy No. 54342.

(e) Whenever in this stipulation reference is made to "Lloyd's Excess Policy", it shall be deemed to refer to the Certificate of Insurance and the Policy of Insurance, copies of which are set forth as Exhibits "B" and "C", respectively, to plaintiff's complaint.

2. This stipulation is made pursuant to the stipulation between the parties hereto dated November 10, 1941.

3. At all times from a date prior to May 1, 1937 to November 1, 1939, the Floyd E. Jones

named in plaintiff's complaint on file herein was employed as a loose fruit salesman by the plaintiff and that at all said times, said Floyd E. Jones was scheduled as an employee under the Primary Bond, with liability of the said surety company under said bond as to any defalcations of said Jones occurring prior to November 1, 1937 limited to the sum of $1000.00. [95] As of November 1, 1937 the limit of liability of the said surety company under said Primary Bond as to any defalcations of said Jones thereafter occurring was increased to $3000.00.

4. At the trial of this action plaintiff may introduce in evidence the Audit Report of Fuller, Eadie & Payne, dated October 28, 1940 addressed to the plaintiff, without the requirement of any auditors being present at said trial, insofar only, however, as said Audit Report refers or applies to schedules 1 to 10, inclusive, thereof, and this stipulating defendant hereby consents to the introduction in evidence of the said Audit Report insofar as it applies to the said aforementioned schedules. Nothing herein contained shall prevent plaintiff from offering in evidence at the trial additional schedules from said Audit Report, but this stipulating defendant reserves the right to object to the introduction in evidence of said additional schedules.

5. The losses reflected by said first ten schedules of said Audit Report were actually sustained by plaintiff and arose out of the defalcations of said Floyd E. Jones occurring during the period

from May 1, 1937 to November 1, 1937; said losses were of a nature as would be covered by the primary bond, by Lloyd's excess policy, by the 1937 bond and by the 1938 bond. This stipulating defendant does not, however, by this stipulation admit that it is liable for any of said losses under either its 1937 or its 1938 excess bonds.

6. Plaintiff has been paid the sum of $1,000.00 by this stipulating defendant covering the liability of said company under said primary bond during the period from May 1, 1937 to and including November 1, 1937. Plaintiff has also been paid by this stipulating defendant, in addition to said $1,000.00, the sum of $2,000.00, being the balance of this stipulating defendant's liability under said primary bond for losses due to the defalcations of said Jones occurring subsequent to November 1, 1937 and being in payment of all [96] losses, with the exception of $22.49, reflected by Schedules 11 and 12 of said Audit Report.

7. By reason of the foregoing, this stipulating defendant admits that the losses due to the defalcations of Jones occurring during the period from May 1, 1937 to and including November 1, 1937 as reflected by the first ten schedules of said Audit Report aggregate the sum of $23,019.22; that if the court should determine that this stipulating defendant is liable under either said 1937 bond or said 1938 bond for said loss then the judgment to be entered by the court against this stipulating defendant on account of the losses sustained by

plaintiff as reflected by the first ten schedules of said audit shall be in the sum of $22,019.22, being the full amount of said losses less the sum of $1,000.00 heretofore paid by this stipulating defendant under said primary bond.

8. Nothing in this stipulation contained shall constitute any admission by this stipulating defendant of liability under said 1937 bond or said 1938 bond, the sole purpose being to constitute an admission as to the extent of any liability of this stipulating defendant by reason of the losses reflected by the first ten schedules of said Audit Report in the event the court should determine this stipulating defendant to be liable under either said 1937 bond or said 1938 bond.

9. Plaintiff contends and claims that in addition to said losses herein stipulated to, it suffered additional losses during the period from May 1, 1937 to November 1, 1937 by reason of the defalcations of said Jones, and that said losses are covered by either said 1937 bond or said 1938 bond, which contentions and claims are denied by this stipulating defendant, and nothing herein shall be construed to prevent or restrict either party from offering evidence as to the existence or non-existence of such additional claimed losses.

10. This stipulation is not to be construed as in any [97] wise constituting an admission, stipulation or agreement that this stipulating defendant is liable to plaintiff in any sum whatsoever under either said 1937 bond or 1938 bond, or otherwise,

and that all defenses to such action are hereby expressly reserved, except as otherwise provided in this stipulation or in the pleadings heretofore filed herein.

11. Nothing contained herein shall be construed to prejudice or waive the right of either party hereto to appeal from or prosecute any appropriate proceeding to review such judgment as may be entered herein, except as to the amount, character and nature of said losses herein referred to and that said losses were occasioned through the defalcations of said Jones at a time when he was employed by plaintiff and scheduled under said primary bond.

Dated this 19th day of March, 1942.

FERRAND & FERRAND
Attorneys for Plaintiff
MILLS & WOOD
By EDWARD C. MILLS
Attorneys for Defendant
United States Fidelity and
Guaranty Company.

[Endorsed]: Filed Mar. 20, 1942. [98]

[Title of District Court and Cause.]

STIPULATION AS TO CERTAIN FACTS

It Is Hereby Stipulated by and between plaintiff and defendants Underwriting Members of Lloyd's in Lloyd's Policy No. 54342 and Stanley Graham Beer, individually, and as representative of the Underwriting Members of Lloyd's in Lloyd's Policy No. 54342, (said defendants being hereinafter referred to as "stipulating defendants"), as follows:

1. (a) Whenever in this stipulation reference is made to "Lloyd's", it shall be deemed to refer to defendant Underwriting Members of Lloyd's in Lloyd's Policy No. 54342.

(b) Whenever in this stipulation reference is made to "Lloyd's Excess Policy", it shall be deemed to refer to the Certificate of Insurance and the Policy of Insurance, copies of which are set forth as Exhibit "B" and "C", respectively, to [100] plaintiff's complaint.

(c) Whenever in this stipulation reference is made to "Primary Bond", it shall be deemed to refer to that certain bond issued by United States Fidelity and Guaranty Company to plaintiff under date of October 23, 1912, being Bond No. 603-12, a copy of which bond is attached to plaintiff's complaint as Exhibit "A".

(d) Whenever in this stipulation reference is made to "Audit Report", it shall be deemed to refer

to the audit report of Fuller, Eadie & Payne dated October 28, 1940, addressed to plaintiff.

2. This stipulation is made pursuant to the stipulation between the parties hereto dated November 1, 1941.

3. At all times from a date prior to May 1, 1937 to a date subsequent to November 1, 1937, the Floyd E. Jones named in plaintiff's complaint on file herein was employed as a loose fruit salesman by the plaintiff and that at all said times, said Floyd E. Jones was scheduled as an employee under the Primary Bond, with liability of the said surety company under said bond as to any defalcations of said Jones occurring prior to November 1, 1937 limited to the sum of $1000.00.

4. At the trial of this action plaintiff may introduce in evidence the Audit Report of Fuller, Eadie & Payne, dated October 28, 1940, addressed to the plaintiff, without the requirement of any auditors being present at said trial, insofar only, however, as said Audit Report refers or applies to schedules 1 to 10, inclusive, thereof, and these stipulating defendants hereby consent to the introduction in evidence of said Audit Report, insofar as it applies to the aforementioned schedules. Nothing herein contained shall prevent plaintiff from offering in evidence at the trial additional schedules from said Audit Report, but these stipulating defendants reserve the right to object to the introduction in evidence of such additional schedules.

5. The losses reflected by said first ten schedules of [101] said Audit Report were actually sustained by the plaintiff, and arose out of the defalcations of the said Floyd E. Jones occurring during the period from May 1, 1937 to November 1, 1937; said losses were of such a nature as would be covered by the primary bond and by Lloyd's excess policy, if the court should determine that Lloyd's excess policy is liable for any losses sustained by plaintiff. These stipulating defendants do not, however, by this stipulation admit that they are liable for said losses under said excess policy.

6. Plaintiff has been paid the sum of $1000.00 by defendant United States Fidelity and Guaranty Company covering the liability of said company under said primary bond during the period covered by the excess bond of Lloyd's referred to in plaintiff's complaint.

7. By reason of the foregoing, these stipulating defendants admit that the losses due to the defalcations of Jones occurring during the period covered by Lloyd's excess policy as reflected by the first ten schedules of said audit report aggregate the sum of $23,019.22; that if the court should determine that these stipulating defendants are liable under Lloyd's excess policy for said loss, then the judgment to be entered by the court against these stipulating defendants, and each of them, on account of the losses sustained by plaintiff as reflected by the first ten schedules of said audit shall be the sum of $22,019.22, being the full amount

of said losses less the sum of $1000.00 heretofore paid under said primary bond.

8. Nothing in this stipulation contained shall constitute any admission by these stipulating defendants of liability under Lloyd's excess policy, the sole purpose being to constitute an admission as to the extent of any liability of these stipulating defendants, and each of them, by reason of the losses reflected by the first ten schedules of said audit report in the event the court should determine these stipulating defendants to be liable under [102] Lloyd's excess policy.

9. Plaintiff contends and claims that in addition to said losses herein stipulated to, it suffered additional losses covered by Lloyd's excess policy during the period from May 1, 1937 to November 1, 1937 by reason of the defalcations of the said Jones, which contentions and claims are denied by these stipulating defendants, and nothing herein shall be construed to prevent or restrict either party from offering evidence as to the existence or non-existence of such additional claimed losses.

10. This stipulation is not to be construed as in any wise constituting an admission, stipulation or agreement that these stipulating defendants are liable to plaintiff in any sum whatsoever under Lloyd's excess policy, or otherwise, and that all defenses to such action are hereby expressly reserved, except as otherwise provided in this stipulation or in the pleadings heretofore filed herein.

Dated this 6th day of January, 1942.

FARRAND & FARRAND
Attorneys for Plaintiff
CHAS. E. R. FULCHER
Attorney for Defendants Underwriting Members of Lloyd's in Lloyd's Policy No. 54342 and Stanley Graham Beer, individually, and as representative of the Underwriting Members of Lloyd's in Lloyd's Policy No. 54342.

[Endorsed]: Filed Mar. 20, 1942. [103]

At a stated term, to wit: The February Term, A. D. 1942 of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Wednesday the 25th day of March in the year of our Lord one thousand nine hundred and 42.

Present:

The Honorable: Harry A. Hollzer, District Judge.

No. 1447-H Civil

[Title of Cause.]

Good cause appearing therefor, it is ordered that on or before April 1, 1942, counsel submit to one another for inspection all documents proposed to

be offered in evidence at the trial of the above-entitled matter;

It is further ordered that on or before April 1, 1942, counsel for plaintiff serve and file in duplicate in chambers, a memorandum containing a brief outline of the facts of the case and of the issues of law involved, together with brief excerpts from the authorities upon which such counsel will rely.

It is further ordered that on or before April 8, 1942, counsel for the respective defendants serve and file similar memoranda as to facts and issues only to the extent that plaintiff's summary is controverted, together with brief excerpts from the authorities upon which defendants' counsel will rely.

At 4:25 P.M. court adjourns. [105]

[Title of District Court and Cause.]

PLAINTIFF'S MEMORANDUM OF FACTS AND OF ISSUES OF LAW

Pursuant to the minute order of this court, dated March 24, 1942, plaintiff submits the following memorandum of the facts of the case and of the issues of law involved:

In this memorandum the following references apply:

1. Whenever reference is made herein to "Pri-

mary Bond", it shall refer to that certain bond issued by defendant United States Fidelity and Guaranty Company to plaintiff under date of October 23, 1912, being Bond No. 603-12, a copy of which bond is attached to plaintiff's complaint as Exhibit "A".

2. Whenever reference is made herein to "Lloyd's", it shall refer to defendant Underwriting Members of Lloyd's in Lloyd's Policy No. 54342. [106]

3. Whenever reference is made herein to "Lloyd's Excess Policy", it shall refer to the Certificate of Insurance and the Policy of Insurance, copies of which are set forth as Exhibits "B" and "C", respectively, to plaintiff's complaint.

4. Whenever reference is made herein to "1937 bond", it shall refer to that certain excess commercial blanket bond issued by defendant United States Fidelity and Guaranty Company to plaintiff, being Bond No. 02-308-37 as amended and modified by certain written riders attached thereto, a copy of which bond and riders is attached to plaintiff's complaint as Exhibit "D". Whenever reference is made herein to "1938 bond", it shall refer to that certain excess commercial blanket bond issued by defendant United States Fidelity and Guaranty Company to plaintiff, being Bond No. 14815-02-313-38 as amended and modified by certain written riders attached thereto, a copy of which bond and riders is attached to plaintiff's complaint as amended as Exhibit "E". Said 1937

bond and said 1938 bond are sometimes herein collectively referred to as "excess bonds".

5. Whenever reference is made herein to "Audit Report", it shall refer to the audit report of Fuller, Eadie & Payne dated October 28, 1940 addressed to plaintiff.

STATEMENT OF FACTS

I.

On October 23, 1912 defendant United States Fidelity and Guaranty Company issued to plaintiff the primary bond which bond at all times since said date has been and now is in effect. A copy of said bond as modified from time to time by signed endorsements attached thereto is attached to plaintiff's complaint as Exhibit "A".

By the primary bond as so modified, defendant United States Fidelity and Guaranty Company guaranteed to pay to plaintiff any [107] pecuniary loss, including that for which plaintiff was responsible, occasioned by any acts of fraud, dishonesty, forgery, theft, larceny, embezzlement, wrongful abstraction or misapplication, or other criminal act of any of the employees listed thereunder, directly or through connivance, in any position and at any location in plaintiff's employ, and during the period commencing upon the date each such employee was listed thereunder and continuing until the termination of the suretyship as therein provided.

As of November 1, 1936 defendant Lloyd's issued

to plaintiff, Lloyd's excess policy in the amount of $25,000.00, copies of which are set forth as Exhibits "B" and "C" to plaintiff's complaint, the purpose and effect of which was to supplement the primary bond by extending the amount of coverage over and above the maximum liability under the primary bond to and not exceeding the sum of $25,000.00. Said excess policy covered the period commencing November 1, 1936 and ending November 1, 1937.

II.

Said Lloyd's excess policy was not renewed at its expiration date on November 1, 1937 but on said November 1, 1937 defendant United States Fidelity and Guaranty Company issued to plaintiff its excess commercial blanket bond, herein referred to as the 1937 bond, a copy of which bond as modified from time to time by signed endorsements attached thereto is attached to plaintiff's complaint as Exhibit "D". The purpose and effect of said 1937 bond as so modified was to insure as therein provided, the fidelity of plaintiff's employees scheduled under said primary bond, in the maximum sum of $25,000.00 over and above the amount of said primary bond, and to cover, among other things, as therein provided, any misconduct of such employees occurring during the period of said Lloyd's excess policy for which a right of recovery against defendant Lloyd's [108] might be lost because of non-discovery and lapse of time.

III.

Thereafter and on November 7, 1938, defendant United States Fidelity and Guaranty Company issued to plaintiff its excess commercial blanket bond, herein referred to as the 1938 bond, which bond provides among other things, that its term should commence November 1, 1938. A copy of said bond as modified from time to time by signed endorsements attached thereto is attached to plaintiff's complaint as exhibit "E". The purpose and effect of said 1938 bond was to insure the fidelity of plaintiff's employees scheduled under said primary bond in the maximum sum of $25,000.00 over and above the amount of said primary bond, and to cover, among other things, as provided in said bond any misconduct of such employees during the period from November 1, 1936 to November 1, 1937 for which a right of recovery against Lloyd's under Lloyd's excess policy and against defendant United States Fidelity and Guaranty Company under its 1937 excess commercial blanket bond might be lost because of non-discovery and lapse of time.

IV.

At all times from a date prior to May 1, 1937 to a date subsequent to November 1, 1937, one Floyd E. Jones was employed by the plaintiff as a loose fruit salesman, and during all of said times said Floyd E. Jones was scheduled as an employee under the primary bond with liability of defendant United States Fidelity and Guaranty Company

under said primary bonds as to any defalcations of said Jones occurring prior to November 1, 1937 limited to the sum of $1,000. During the period from May 1, 1937 to November 1, 1937, losses due to the defalcations of said Floyd E. Jones were actually [109] sustained by plaintiff in the sum of $23,019.22, as reflected by Schedules I to X inclusive of the Fuller, Eadie & Payne audit report. Said losses were of a nature as were covered by the primary bond, by Lloyd's excess policy, by the 1937 bond and by the 1938 bond.

V.

Plaintiff has been paid the sum of $1,000 by defendant United States Fidelity and Guaranty Company covering the liability of said company under its primary bond during the period from May 1, 1937 to and including November 1, 1937. As of November 1, 1937 the limit of liability of defendant United States Fidelity and Guaranty Company under said primary bond as to any defalcations of Floyd E. Jones thereafter occurring was increased to $3,000.00. Plaintiff has been paid by defendant United States Fidelity and Guaranty Company in addition to said $1,000 the sum of $2,000, being the balance of defendant United States Fidelity and Guaranty Company's liability under said primary bond for losses due to the defalcations of said Jones occurring subsequent to November 1, 1937.

VI.

By Stipulation As to Certain Facts entered into between plaintiff and defendant Lloyd's, dated January 6, 1942, and by Stipulation As To Certain Facts entered into between plaintiff and defendant United States Fidelity and Guaranty Company dated March 19, 1942, which said stipulations have been heretofore filed herein, defendant Lloyd's and defendant United States Fidelity and Guaranty Company have each respectively admitted the facts set forth in paragraph IV above, and have further admitted respectively that if the court should determine that it is liable for said loss then the judgment to be entered against it by the court on account of the [110] losses reflected by Schedules I to X of the Fuller, Eadie & Payne audit report shall be in the sum of $22,019.22, being the full amount of said losses less the sum of $1,000 heretofore paid by defendant United States Fidelity and Guaranty Company under said primary bond.

VII.

On or about July 31, 1940 plaintiff discovered for the first time that said Floyd E. Jones might not have accounted for all of the moneys received by him on plaintiff's behalf for fruit sold by him, and immediately notified defendants, Lloyd's and United States Fidelity and Guaranty Company, of that fact in the manner provided in said contracts of insurance. Thereafter plaintiff notified said respective defendants in writing of said loss and filed proofs of loss under said primary and

said excess fidelity insurance contracts all within the time and in the manner therein provided, and have otherwise duly performed all of the conditions on its part to be performed under each and every of said policies.

ISSUES INVOLVED

The only issue involved is as to whether liability to plaintiff for the said defalcations of Floyd E. Jones as above referred to rests upon defendant Lloyd's or upon defendant United States Fidelity and Guaranty Company. Defendant United States Fidelity and Guaranty Company contends that by the terms of its excess commercial blanket bonds or either of them it is not obligated to pay plaintiff for losses suffered by reason of any defalcations of plaintiff's employees as it contends that the defalcations of said Jones, as aforesaid, occurring between May 1 and November 1, 1937, as reflected by Schedules I to X, inclusive, of the Fuller, Eadie & Payne audit report, are covered by the Lloyd's excess policy and [111] that plaintiff is entitled to recover for said losses under said Lloyd's excess policy. Defendant Underwriting Members of Lloyd's contend that their policy does not cover the defalcations because of the following clause contained in said Lloyd's policy, to wit:

> "Warranted Free of All Claim for losses occurring subsequent to the expiry date of this Policy and for losses not discovered during its

> currency, with the understanding that in event of non-renewal the Assured shall have a period equal to that provided by the Discovery Clause of the aforesaid Primary bonds (but not exceeding three years) in which to discover losses claimable under this Insurance."

Defendant Lloyd's contend that within the meaning of the said quoted warranty there is no "Discovery clause" in the primary bond and that therefore their liability under the said warranty above quoted ceased with the "expiry date" of Lloyd's policy, to wit, November 1, 1937, noon, Pacific Standard time.

Defendant United States Fidelity and Guaranty Company contend that the term "discovery clause" as used in the above quoted warranty was not intended to be and is not limited to a specific clause in said primary bond providing for discovery, but was intended to and does mean merely the period of time within which under said primary bond losses must be discovered in order to be recoverable thereunder; that in the absence of specific limitation there is no definite time limit for discovery under said primary bond.

Both said 1937 bond and said 1938 bond issued by defendant United States Fidelity and Guaranty Company contain so-called superseded suretyship riders the effect of which is to provide that if said losses shall not be discovered within the time limited by the Lloyd's policy for the discovery of loss thereunder, said losses shall be covered by said

defendant United States Fidelity and Guaranty Company's excess commercial blanket bonds. Plaintiff therefore takes no position on the controversy existing between defendant Lloyd's and defendant United States Fidelity and Guaranty [112] Company, plaintiff contending merely that under one of the three of said excess fidelity policies mentioned it is entitled to be paid for the losses admittedly suffered by it by reason of the defalcations of said Floyd E. Jones during the year 1937 between May 1 and November 1, as reflected by Schedules I to X, inclusive, of the Fuller, Eadie & Payne audit report, namely, for the sum of $22,019.22, being the full amount of said losses admitted by defendants less the sum of $1,000 heretofore paid by defendant United States Fidelity and Guaranty Company under its said primary bond.

As plaintiff takes no position on said controversy, and as the controversy involves primarily the matter of the interpretation of the clause in the Lloyd's policy above quoted, plaintiff does not submit any points and authorities.

Respectfully submitted,
FARRAND & FARRAND
Attorneys for Plaintiff [113]

Received copy of the within Memorandum of Facts this 31st day of March, 1942.

MILLS & WOOD
By EDWARD O. MILLS
Attorney for Defendants

Received copy of the within Memorandum of Facts this 31st day of March, 1942.

CHAS. E. R. FULCHER
Attorney for Underwriters
of Lloyd's etc. et al.

[Endorsed]: Filed Mar. 31, 1942. [114]

[Title of District Court and Cause.]

MEMORANDUM OF FACTS AND ISSUES OF LAW OF DEFENDANT UNITED STATES FIDELITY AND GUARANTY COMPANY

Defendant, United States Fidelity and Guaranty Company, pursuant to the minute order of this Court, submits the following memorandum of the facts and of the issues of law involved:

1. In this memorandum, the references will be the same as contained in paragraphs numbered 1, 2, 3, 4 and 5 of the memorandum filed by plaintiff and appearing on pages 1 and 2 of plaintiff's memorandum.

STATEMENT OF FACTS

I.

Except as hereinafter set forth, the statement of facts and issues involved are as set forth in the memorandum of plaintiff. [115]

II.

The primary bond of United States Fidelity and

Guaranty Company is in substance and effect as set forth in the first subdivision of paragraph I of plaintiff's statement of facts, and its provisions were known to Lloyd's when and before its policy was issued, upon forms prescribed and provided by Lloyd's.

III.

As of November 1, 1936, defendant Lloyd's issued to plaintiff Lloyd's excess policy in the amount of $25,000.00, effective during the period from the 1st day of November, 1936, to the 1st day of November, 1937, covering losses over and above the primary limit on United States Fidelity and Guaranty Company's bond No. 14815-03-62-12, being the bond referred to as the primary bond.

IV.

Said Lloyd's excess policy provides:

"1. This policy is to indemnify the assured (plaintiff) against all such direct loss as the assured may sustain by reason of the dishonesty of any employees in their employment who are bonded under a bond or bonds (hereinafter called primary bonds) issued by an approved insurance company, subject to the conditions hereinafter contained."

"2. It is understood and agreed that such employees are bonded under the aforesaid primary bonds for a total aggregate amount of approximately $982,000, and that this policy of excess insurance only covers such portion of the

ultimate net loss sustained by assured in respect of defalcations committed by any such employee subsequent to the 1st day of November, 1935, as shall be in excess of the amount for which such employee is bonded under the said primary bonds," not in excess of $25,000.00.

"4. It is further understood and agreed that this excess insurance is subject to all the terms and con- [116] ditions of the said primary bonds insofar as the same do not conflict with the terms and conditions herein contained * *."

"5. Warranted free of all claim for losses occurring subsequent to the expiry date of this policy, and for losses not discovered during its currency, with the understanding that in event of non-renewal the assured shall have a period equal to that provided by the Discovery clause of the aforesaid primary bonds (but not exceeding three years) in which to discover losses claimable under this insurance."

(See printed form page 21 Exhibit to Complaint and typewritten form page 26 of Exhibit—both forms identical.)

V.

Said Lloyd's excess policy was not renewed at its expiration date on November 1, 1937, but on said November 1, 1937, defendant United States Fidelity and Guaranty Company issued to plaintiff its excess commercial blanket bond, herein referred to as the

1937 bond, a copy of which bond is modified from time to time by endorsements attached thereto, a copy of which is attached to plaintiff's complaint as Exhibit "D". That to said bond there was attached a rider, wherein said Lloyd's excess policy is referred to as the prior bond, and its cancellation or termination recited. said rider provides:

> "1. That the attached bond shall be construed to cover, subject to its terms, conditions and limitations, any loss or losses under the prior bond which shall be discovered after the expiration of the time limited therein for the discovery of loss thereunder, and before the time limited in the attached bond for the discovery of loss thereunder, provided that such loss or losses would have been recoverable under the prior bond had it not been cancelled or terminated * *."
>
> (Page 38 of Exhibit attached to Complaint.) [117]

VI.

The 1938 bond of United States Fidelity and Guaranty Company referred to in paragraph III of plaintiff's memorandum had attached thereto a rider which is in identical language with that in the 1937 bond, except that it refers to the 1937 bond as the prior bond instead of Lloyd's policy.

ISSUES INVOLVED

The issues are whether liability for the losses reflected by schedules 1 to 10, inclusive, of the Fuller,

Eadie & Payne audit, rests upon Lloyd's, or United States Fidelity and Guaranty Company, and, in this connection, United States Fidelity and Guaranty Company contends such liability is imposed upon Lloyd's and not on United States Fidelity and Guaranty Company, for the following reasons:

1. United States Fidelity and Guaranty Company has paid and discharged all its liability to plaintiff, under its primary bond;

2. The Lloyd's policy makes specific reference to the primary bond, and thereby adopted the primary bond with full knowledge of the contents of that bond, including any provision or lack of provision for the time of discovery of losses;

3. None of the conditions in the primary bond in any manner conflicted with the terms or conditions of Lloyd's bond;

4. All losses claimed under schedules 1 to 10, inclusive, of the Fuller, Eadie & Payne audit, were discovered within three years from the non-renewal of the Lloyd's policy as of November 1, 1937;

5. It was and is the clear purpose and intent of paragraph 5 of Lloyd's policy to afford to the plaintiff a time beyond the event of non-renewal of Lloyd's policy, within which to discover losses occurring during the currency of the primary bond and during the currency of Lloyd's policy;

6. Such intent and purpose is clearly and definitely expressed in paragraph 5 of Lloyd's policy, but if, taken as a whole, [118] such paragraph is, in any wise, uncertain, or ambiguous, or

if its meaning is doubtful or susceptible to two constructions, it is to be construed liberally in favor of the insured and strictly against the insurer.

AUTHORITIES

(Unless otherwise stated, emphasis in quotations from authorities, are ours.)

"Furthermore, it is a fidelity bond, and will be given a more liberal construction than a contract which involves only the pure question of the rights and obligations of a surety."

First State Bank v. Metropolitan Cas. Ins. Co., 79 S. W. (2d) 835 (citing Couch's Cyclopedia of Insurance Law, Vol. 5, Sec. 1199a, p. 4324 and authorities there cited).

"Bonds or contracts of those companies which guarantee the fidelity of employees and which make the business one for profit, are essentially insurance contracts * * *. Therefore the rights and liabilities of the parties are governed in case of ambiguity by the rules of construction applicable to insurance, rather than by the rule strictissimi juris which determines the rights of ordinary guarantors or sureties without pecuniary consideration. (Citing numerous authorities.)"

Joyce on Insurance, (1918) Vol. 4, p. 4608, Sec. 2766.

"Another point to be considered in connection with risks and losses, is that fidelity guaranty insurance is a contract of indemnity; and inasmuch as obtaining full indemnity is the general purpose,

it should not be defeated except by limitations which are expressly and clearly set forth without ambiguity in the contract. (Citing cases.)"

Joyce on Insurance (1918) Vol. 4, p. 4609, Sec. 2766. [119]

"The rule is well established that a contract of fidelity or insurance susceptible of two constructions, one favorable to the insured and the other to the insurer, should be construed favorable to the former."

Hartford Acc. & Inc. Co. v. Swedish Methodist Assn., 92 Fe. (2d) 649, at 652

Citing:

First National Bank v. Hartford, Etc., 95 U. S. 673, 678; 24 L. Ed. 563

Thompson v. Phoenix Ins. Co., 136 U. S. 287; 10 S. Ct. 1019; 34 L. Ed. 408

American Surety Co. v. Pauly, 170 U. S. 133, 18 S. Ct. 552; 42 L. Ed. 977

See also:

State Bank of Prague v. American Surety Co., 288 N. W. 7 (Minn.)

"It being entirely clear that within the contemplation of the parties, their stipulations were for the purpose of affording indemnity to the obligee, all substantial doubts with respect to the meaning of the terms they employ should be resolved to effectuate that obvious intention."

Joyce on Insurance, (1918) Vol. 4, p. 4664, Sec. 2766

See also:

Century Digest, 4th Decennial Edition "Insurance", Sec. 146 (3). Citing cases from all State and Federal jurisdictions.

Court will not follow a refined construction of the language used by a surety in a fidelity bond, to defeat the promised and paid for protection under the bond.

Franklin Savings & T. Co. v. American Employers Ins. Co., 99 Fed. 494 [120]

The coverage under Lloyd's policy is and was intended to be as broad as under the primary bond, and if it is argued that there was no liability under the primary bond for losses not discovered within the current year of the currency of the primary bond, such contention is untenable.

Authority

Webster v. United States Fidelity and Guaranty Co., 153 So. 159 (Miss.) supports these statements. It is said in that case:

"When all the provisions of this rider are considered together, it appears that the only purpose of the claim last referred to is to continue the prior bond for the purpose of permitting a recovery *under the last bond for any losses recoverable under the prior bond.*"

"The last bond, which was executed May 14, 1928, contains no provision requiring losses thereunder to be discovered within any fixed time to create liability therefor, and therefore

the appellant is *entitled to recover under the terms and conditions thereof for losses occurring during the term thereof.*"

"We do not think the provision hereunder reviewed attempts to change or limit the statutory period for bringing suits, but it is rather one providing *what class of losses are covered* and limiting *liability* thereunder to those losses discovered within that period."

State Bank of Prague v. American Surety Co., 288 N. W. 7 (Minn.)

In that case the bond was in effect for one year. It provided for notice within a specified period after discovery and the filing of claim within three months after discovery. (Those [121] provisions were similar to those contained in the primary bond here involved.)

It was contended that the defalcation was not within the coverage, because, while it resulted from acts done within the coverage period, there was no liability because not discovered until afterward.

At page 12 of the opinion, the Court says:

"The policy does not expressly provide that it only shall cover losses discovered during the coverage period. Nor is it susceptible of that construction. The plain meaning of the language is that it covers losses resulting from acts of defalcation of the employee committed during the coverage period. Where, as here,

the insurance is to indemnify the insured against loss through the fraudulent and dishonest acts of his employe in connection with the duties of his employment, *the insurance covers all losses due to such acts committed during the coverage term,* whether *discovered during that time or afterwards.* United States v. Maryland Casualty Co., 4 Cir. 299 Fed. 942; Mid City Trust & Savings Bank v. National Surety Co., 202 Ill. App. 6. We decided Cary v. National Surety Co., 190 Minn. 185; 251 N. W. 123, and Farmers Co-op. Exchange Co. v. U. S. F. & G. Co., 150 Minn; 184 N. W. 792, upon assumption that such was the rule."

"Where there is doubt as to the meaning of such a policy, it is construed in favor of the insured as providing for such coverage. The uniform practice in deference to such rule, when the intention was to limit coverage to losses discovered during the coverage period, or within a certain time thereafter, has been to so provide in express terms in the policy. (Citing cases.)

* * * The failure to include such a limitation in the [122] policy involved here, should be construed as showing an intention that there was to be none. Although the loss was not discovered until after the coverage period had expired, the policy covered the defalcation in question since it occurred during the coverage period."

Any other construction, in the absence of an express provision for discovery during the currency of a bond or policy, leads to absurd consequences.

7. The coverage under Lloyd's policy is as broad as it is under the primary bond.

8. Paragraph 5 of Lloyd's policy says "Warranted free of all claims for losses occurring subsequent to the date of this policy and for losses not discovered during its currency", and if the provision stopped there, it would mean one thing, but immediately follows the qualifying language "with the understanding that in the event of non-renewal, the assured shall have a period equal to that provided by the Discovery clause of the aforesaid primary bonds (but not exceeding three years) in which to discover losses claimable under this insurance." The provision must be construed as a whole, and so construed, without a lesser time provided in the primary bond, gives three years from non-renewal for the discovery of losses occurring within its currency.

As to 1937 Excess Bond of United States Fidelity and Guaranty Company

This bond became effective as of November 1, 1937, the date of expiration of Lloyd's Excess policy, and covers losses sustained from the 1st day of November, 1937, to the effective date of the cancellation of the bond, and while both the excess bond and the primary bond of United States Fidelity and Guaranty Company are in force and dis-

covered before twelve months from the cancellation of the excess bond. [123]

All of the losses here involved occurred prior to November 1, 1937,—that is prior to the effective date of the 1937 excess bond.

By a rider attached to this 1937 bond, there is noted the fact of the Lloyd's Excess Fidelity Bond (called the prior bond) dated November 1, 1936, and of the termination or cancellation of the Lloyd's Bond, as of the effective date of the 1937 Excess bond of United States Fidelity and Guaranty Company. This rider provides:

> "Now, Therefore, it is hereby understood and agreed as follows:
>
> 1. That the attached bonds shall be construed to cover, subject to its terms, conditions and limitations, any loss or losses under the prior bond which shall be discovered after the expiration of the time limited therein for the discovery of loss thereunder, and before the time limited in the attached bond for discovery of loss thereunder; provided that such loss or losses would have been recoverable under the prior bond had it not been cancelled or terminated; and provided further, that the acts or defaults covering such loss or losses be such as are covered under the attached bond on its effective date."

This 1937 excess bond cannot cover the losses specified in schedules 1 to 10, inclusive, of the Ful-

ler, Eadie & Payne audit for these several reasons:

1. The losses did not occur, or were not sustained subsequent to the 1st day of November, 1937.

2. They were sustained during the currency of the primary bond and Lloyd's Excess policy, viz, between May 1, 1937, and November 1, 1937.

3. They were discovered within three years from the non-renewal, on November 1, 1937, of the Lloyd's policy, and not after the time for discovery under Lloyd's policy. [124]

4. The specified losses were recoverable under Lloyd's excess policy, first, because they were sustained during the currency of that policy and the currency of the primary bond and were discovered within the period of discovery specified in Lloyd's policy.

5. The evident and expressed purpose of that bond was not to relieve Lloyd's from liability imposed upon Lloyd's for losses occurring during the currency of Lloyd's policy, which were discovered within the discovery period of that policy, but to cover losses not covered by Lloyd's policy because of failure of discovery within the period specified in the Lloyd's policy.

Authorities

London & Lancashire Ins. Co. v. Peoples Nat. Bank, etc., 59 Fed., (2d) 149.

The case involved an identical situation as is involved under the 1937 excess bond of United States

Fidelity and Guaranty Company. There the Metropolitan Casualty Insurance Company issued a fidelity bond covering losses sustained during it currency and discovered within two years after its termination. The bond was superceded by one executed by London & Lancashire Insurance Company, and upon the latter becoming effective, the Metropolitan bond was cancelled and a rider was attached to the new bond, which, after reciting that the prior bond "may provide that any loss thereunder shall be discovered or claim therefor shall be filed, within a certain period after the final expiration or cancellation thereof" it is understood and agreed that the new bond should cover losses under the prior bond which shall be discovered after the expiration of the period for discovery, or, if no such period, after the bar of the statute of limitations and before the expiration of the time limited in the new bond for discovery of losses under it, and which would have been recoverable under the prior bond if it had not been terminated. The language is almost identical with that contained in the 1937 bond [125] of United States Fidelity and Guaranty Company. The Court says (page 151):

> "A careful study of the rider convinces us that appellant did not thereby undertake the assumption of any and all liability which might accrue under the Metropolitan contract, but only such as, accruing while the Metropolitan contract was in force, would not, under that contract, be enforceable if not discovered with-

in two years after the Metropolitan contract was terminated. By the terms of that contract, a loss occurring while it was in force would be recoverable if discovered within two years after termination of the contract; but if discovered more than two years after termination, no action would lie. Had the contract remained in force, the right of recovery would have persisted until the loss was discovered. Therefore, in canceling the Metropolitan contract the bank was deprived of the right of recovery for a loss occurring thereunder which was not discovered within two years after the cancellation. The new bond carried no indemnity against loss accruing prior to the issue, but not discovered within two years after the termination of the prior contract, that the rider was attached."

* * * * * *

"This alleged loss having been discovered by the indemnified bank within two years after the cancellation of the Metropolitan contract, it follows that it is not a loss for which appellant, by its rider, assumed to indemnify appellee, and it was not recoverable against appellant. It will therefore be unnecessary to inquire into the merits of the contention respecting Maple's alleged dishonest acts as the cause of that asserted item of loss." [126]

In Hartford Acc. & Ind. Co. v. Collin-Dietz Mor-

ris Co. 80 Fed. (2d) 441, a similar rider was involved. At page 445, the Court says:

> "The rider in question applies only to shortages which occurred during the currency of the bond of 1929 and which were discovered *more than* two years after that bond terminated. In other words, it applies exclusively to losses which were sustained prior to October 1, 1930, and which were not discovered *until after* October 1, 1932."

Citing:

London & Lancashire Ins. Co. v. Peoples Nat. Bank, Supra;

Maryland Casualty Co. v. First Nat. Bank, 246 Fed. 892.

Hartford Acc. & Ind. Co. v. Collins-Dietz, Etc., 80 Fed. (2d) 441.

In that case Metropolitan Casualty Insurance Company executed a fidelity bond dated March 4, 1927, which expired October 1, 1929. On October 1, 1929, Hartford Accident and Indemnity Company executed its bond, which terminated October 1, 1930. This bond covered losses occurring while it was in force and discovered within two years after its termination.

To this latter bond a rider was attached providing that the bond to which the rider was attached, should cover losses covered under the Metropolitan bond "which shall be discovered after the expiration of any such period, or, if there be no such pe-

riod, after the bar of the statute of limitations, and before the expiration of the time limited in the attached bond for loss thereunder—and which would have been recoverable under said fidelity suretyship (the Metropolitan bond) had it continued in force and also under the attached bond had such loss or losses occurred during the currency thereof." [127]

A third bond was executed by the Hartford Company on October 1, 1930, which terminated one year later. Its material provisions were identical with those contained in the previous bond, except that it referred to the previous bond of the same company. Of this rider the Court said (page 245):

> "The rider in question applies *only* to shortages which occurred during the currency of the bond of 1929 and which were discovered *more than* two years after that bond terminated. In other words, it applies exclusively to losses which were sustained *prior* to October 1, 1930, and which were not discovered until *after* October 1, 1932. Maryland Casualty Company v. First National Bank (C. C. A.) 246 Fed. 892; London & Lancashire Indemnity Co. v. Peoples National Bank (C. C. A.), 59 F. (2d) 149. There were no such shortages. All shortages were discovered before October 1, 1932."

As to the 1938 Excess Bond of United States Fidelity and Guaranty Company

This bond became effective November 1, 1938,

and covered losses sustained during its currency and during the currency of the primary bond. It covered losses sustained during its currency and during the currency of its primary bond, and discovered within twelve months from the cancellation of the 1938 bond. This bond carried a rider which refers only to the 1937 Excess bond, as "the prior bond", and which rider provides:

> "That the attached bond shall be construed to cover, subject to its terms, conditions and limitations, any loss or losses under the prior (1937) bond which shall be discovered after the expiration of the time limited therein [128] for the discovery of loss thereunder, and before the expiration of the time limited in the attached bond for the discovery of loss thereunder, provided that such loss or losses would have been recoverable under the prior (1937) bond had it not been cancelled or terminated; and provided further that the acts or defaults causing such loss or losses be such as are covered under the attached bond on its effective date."

While the losses claimed under schedules 1 to 10 of the Fuller, Eadie & Payne audit were not discovered within twelve months from the expiration of the 1937 bond, such losses were not recoverable under the 1937 bond, for the reasons already stated, viz, that such losses were discovered within the time specified in Lloyd's Excess policy and are recoverable under that policy.

Authorities

See Authorities cited hereinbefore

Our understanding is that plaintiff does not seek in this action to recover losses, if any, other than those reflected in Schedules 1 to 10, inclusive, of the Fuller, Eadie & Payne audit report.

For the reasons set forth, defendant United States Fidelity and Guaranty Company submits that the judgment of the Court should be that the losses here involved should be found to be chargeable to and covered by Lloyd's Excess policy, and that no liability exists as against United States Fidelity and Guaranty Company. To so hold, gives full effect to the language of the so-called "warranty" in Lloyd's certificate and its policy, evidencing the clear intent and purpose to cover losses sustained during its currency and discovered after its expiry date. To hold otherwise, has the effect to disregard [129] entirely the purport, meaning and intent of paragraph 5 of Lloyd's policy.

In view of the fact that this memorandum and the memorandum of defendant Lloyd's are being served concurrently, counsel for United States Fidelity and Guaranty Company beg leave to suggest that the Court grant to both defendants opportunity, at the Court's convenience, to present oral or written responses to the respective memoranda.

Respectfully submitted,

MILLS & WOOD

By EDWARD C. MILLS

Attorneys for Defendant
United States Fidelity and
Guaranty Company [130]

Received copy of the within Brief this 8th day of April, 1942.

CHAS. E. R. FULCHER,
Attorney for Underwriters
at Lloyds etc.

Received copy of the within memorandum of facts and issues this 8th day of April, 1942.

FARRAND & FARRAND
By STEPHEN M. FARRAND
Attorneys for plaintiff.

[Endorsed]: Filed Apr. 8, 1942. [131]

[Title of District Court and Cause.]

MEMORANDUM OF FACTS, ISSUES OF LAW AND AUTHORITIES OF DEFENDANTS, UNDERWRITING MEMBERS OF LLOYD'S IN LLOYD'S POLICY NUMBER 52342, and STANLEY GRAHAM BEER, INDIVIDUALLY AND AS REPRESENTATIVE OF THE UNDERWRITING MEMBERS OF LLOYD'S IN LLOYD'S POLICY NUMBER 52342.

Pursuant to the Minute Order of this Court, dated March 24, 1942, plaintiff has submitted a Memorandum of Facts of the case, and the issues of law involved.

We take no exception to plaintiff's Memorandum of Facts, and generally speaking, to its statement

of issues involved, but do not want to be understood as being limited by its reference to but one paragraph of Lloyd's policy, mentioned therein. We do agree entirely that plaintiff is entitled to judgment against United States Fidelity and Guaranty Company, (hereinafter referred to as "U. S. F. & G."), for $22,019.22, or against these defendants, (hereinafter referred to as "Lloyds"), for that amount.

To merely state the issues, with excerpts from authorities, would be of little aid to the Court, and we are therefore presenting some argument along with our decisions, but reserve the right to reply orally or in writing, as the Court may direct, to U. S. F. & G.'s Memorandum, since it will be filed simultaneously herewith, and we will prior to that time have no opportunity to [132] reply thereto.

BRIEF RECAPITULATION OF PERTINENT FACTS

In order to follow the argument we believe it will be helpful to state, as tersely as clarity will permit, a few of the pertinent facts. They are:

(1) On October 23, 1912, U. S. F. & G. issued to the plaintiff its primary policy, (Exhibit "A"), which has ever since continued in force;

(2) That policy has never contained a Discovery Clause;

(3) On November 1, 1936, Lloyds issued its excess certificate of insurance, (Exhibit "B");

(4) As of November 1, 1936, Lloyds issued its excess policy, (Exhibit "C");

(Note: The certificate is in the nature of a binder issued by a local agent, and remains effective until superseded by the policy, which comes from London, and is dated back to the date of the issuance of the certificate.)

(5) The certificate and policy were effective for one (1) year only, to-wit, from November 1, 1936, to November 1, 1937;

(6) Both Lloyds certificate and policy contained the following clause:

"Warranted Free of All Claim for losses occurring subsequent to the expiry date of this Policy and for losses not discovered during its currency, with the understanding that in event of non-renewal the Assured shall have a period equal to that provided by the Discovery Clause of the aforesaid Primary Bonds [133] (but not exceeding three years) in which to discover losses claimable under this Insurance."

(7) On November 1, 1937, Lloyds Excess Policy expired by its own terms, it having never been renewed;

(8) On November 1, 1937, U. S. F. & G. issued its Excess Policy, (Exhibit "D");

(9) On November 1, 1938, U. S. F. & G. issued its Excess Policy, (Exhibit "E");

(10) Both of U. S. F. & G.'s policies had attached thereto a rider commonly called a "continuity rider", or a "superseded suretyship rider", the pertinent portions of which read as follows, to-wit:

"1. That the attached bond shall be construed to cover, subject to its terms, conditions and limitations, any loss or losses under the prior bond which shall be discovered after the expiration of the time limited therein for the discovery of loss thereunder, and before the expiration of the time limited in the attached bond for the discovery of loss thereunder; provided that such loss or losses would have been recoverable under the prior bond had it not been cancelled or terminated; and provided further, that the acts or defaults causing such loss or losses be such as are covered under the attached bond on its effective date."

(11) The loss here involved was discovered by plaintiff on July 31, 1940. [134]

STATEMENT OF RESPECTIVE POSITIONS AND CONTENTIONS OF DEFENDANTS, LLOYDS AND U. S. F. & G.

As has been suggested by plaintiff, Lloyds asserts that it has no liability, because the discovery of the loss did not occur during the currency of its excess policy; that the paragraph above quoted is clear and definite; that there is no room for implication or interpretation, and that any other interpretation, rather than its clear provisions, would be in effect the making by the Court of a new and different contract than was entered into between the parties to the policy; that the purpose of

the continuity rider issued by U. S. F. & G. was to pick up any losses occurring during the currency of Lloyds policy, but not discovered within the time limited in Lloyds policy for the discovery thereof, and to thus make U. S. F. & G. liable therefor.

As we understand it, U. S. F. & G. contends that since there was no Discovery Clause in the primary policy, Lloyds is liable on its excess policy for all losses occurring during its currency, and discovered at any time prior to the limitation of three years, and that the only limitation on discovery, other than the limitation of three years above mentioned, is the limitation fixed by the Statute of Limitations.

Lloyds further contends that the policy does not so state; that the Statute of Limitations is not the same as a Discovery Clause, and that since the primary policy contained no Discovery Clause, the loss would have to be discovered during the period prescribed in Lloyds excess policy, to-wit, during its currency, and that the exception provided for in Lloyds policy, to this discovery period, never became operative or effective, due to the failure of the primary policy to contain a Discovery Clause. [135]

ARGUMENT

Some bonds contain no Discovery Clause. Some require discovery during the currency of the bond. Others have periods of three months, six months, one year, etc., etc.

Examples of Discovery Clauses are found in both the U. S. F. & G. excess bonds.

See Paragraph 5 (a) of Exhibit "D", page 32 of the complaint;

Paragraph 5 (a) of Exhibit "E" attached to the Stipulation for Amendment to Complaint.

Innumerable decisions involving Discovery Clauses have been the subject of decisions by the Court, and such clauses have been uniformly upheld.

The following are a few examples thereof:

City Bank vs. Bankers' Limited Mut. Cas. Co., (1931), 238 N. W. 819;

Thompson vs. American Surety Co., (1930), C. C. A. 8th, 42 F. (2d) 953;

Ballard vs. U. S. Fidelity and Gauaranty Co., 150 Ky. 236, 150 S. W. 1;

Chicora Bank vs. U. S. Fidelity and Guaranty Co., 161 S. C. 33, 159 S. E. 454, (1931);

Miners & Merchants Bank vs. U. S. F. & G. Co., 233 F. 654;

Florida Cent. & P. R. R. Co. vs. American Surety Co., 99 F. 674.

In the development of the history of surety bonds, the earlier bonds contained no Discovery Clause, while in later years Discovery Clauses were in many instances placed in surety bonds. [136]

As is obvious, Lloyds and other large insurance carriers endeavor, through a uniform clause, to protect themselves in relation to Discovery Clauses, so that a standard clause may be applicable in

cases where there is no Discovery Clause and where there is a Discovery Clause.

The paragraph under scrutiny here discloses, as we shall show, its applicability to all circumstances, so that if no Discovery Clause exists in, the primary policy, then the right of discovery ceases at the expiration of the time the excess policy was effective, and if the primary policy contains a Discovery Clause then the right of discovery under the excess policy is co-extensive with it,—not, however, to exceed three years.

We submit that the Lloyds policy is clear and definite, and for that reason the Court is without power, under the guise of construction, to make a new and different contract for the parties.

> As said in Loyalton, etc., vs. California, etc. Co., 22 Cal. App. 75, at 77, (133 Pac. 323:
>
> "Where parties have written engagements which industriously express the obligations which each is to assume, the Courts should be reluctant to enlarge them by implication as to important matters. The presumption is, that having expressed some, they have expressed all, of the conditions by which they intend to be bound. (Citing numerous cases)"

The law is well fixed and expresed in C. C. P., Section 1858, which provides as follows, to-wit:

> "Construction of Statutes and Instruments, General Rule. In the construction of a [137]

statute or instrument, the office of the judge is simply to ascertain and declare what is in terms or in substance contained thereon, not to insert what has been omitted or to omit what has been inserted; and where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all."

See California R. Co. vs. Producers R. Corp., 25 Cal. App. (2d) 104, at 107; 76 Pac. (2d) 533, where the Court, quoting from the above section, italicized the words "Not to insert what has been omitted".

Another fundamental rule of construction here involved is well stated in 23 Cal. Jur., 758, Section 133, and supporting cases, as follows:

"Every Part to Be Given Effect. It is fundamental that, if possible, a statute or code section should be construed so as to give meaning and effect, not only to the statute or code section as a whole, but to each and every part thereof,—i. e., to every word and clause, and certainly to every distinct or co-ordinate provision or section. Such meaning must be given, if possible, as will permit the whole statute to stand, and leave no part useless, or deprived of all sense and meaning, even to sustain the validity of the act. Words should never be considered unnecessary and surplusage, if a reasonable [138] construction can be adopted which will give force to and preserve all the terms of the statute. Any construction should be avoided which implies

> that the legislature was ignorant of the meaning of the language as employed, or that it used words in vain, the legal intendment being that each and every word or clause was inserted for some useful and sensible purpose, and that, when rightly understood, it may have some practical operation. If certain provisions are repugnant, effect should be given to those which best comport with the end to be accomplished and render the statute effective, rather than nugatory."

With these rules of construction in mind, let us now examine the clause in Lloyds excess policy above quoted.

We shall hereafter refer to the following portion thereof, to-wit:

> "Warranted free of all claim for losses occurring subsequent to the expiry date of this Policy and for losses not discovered during its currency,"

as the "main clause", and to the balance thereof, to-wit:

> "with the understanding that in event of non-renewal the Assured shall have a period equal to that provided by the Discovery Clause of the aforesaid Primary Bonds (but not exceeding three years) in which to discover losses claimable under this Insurance."

as the "exception to the main clause".

Now, referring to the main clause separately, it

will be [139] observed that it is all inclusive; that is, that there could be no claim under this policy, where the loss was not discovered during the time the policy was in effect. This means,—

(1) If the policy was renewed;

(2) If the policy was not renewed.

The exception, which starts with the phrase "with the understanding", is the same as though it said "except", or "provided, however", or used similar terms.

Now, first, let us see whether a construction such as our opponent claims, would give effect to every word, phrase, sentence, etc., of this paragraph, as we are required to do in construing it under the above authorities.

If the primary policy contained a Discovery Clause of three months, six months, one year, etc., then of course full effect could be given to both Subdivision (1) and Subdivision (2) of the main clause, subject to the exception, and we could give full effect to the entire clause, in conformity with the rules of construction, since there would not then have been a renewal, and the main clause, subject to the exception, would be effectual. Since, however, the primary policy does not contain a Discovery Clause, it is impossible to give full effect to the main clause, and the second subdivision of the main clause becomes surplusage and is wholly without effect, if we are to construe the policy in the manner urged by our opponent.

If we are to construe the entire clause as meaning not what it says, but that the period of time for discovery under the excess policy shall be the same as it is under the primary policy, then what are we to do with the second subdivision of the main clause, —that is, the one which provides, in effect, that in the event of non-renewal, unless there is a Discovery Clause in the primary policy, then the right to discovery shall be co-extensive with the currency of the excess policy?

Such a construction would not be in accordance with the [140] recognized and fundamental rules of interpretation. However, if we construe the policy as is herein contended for, then we shall give full effect to all the phrases, sentences and words contained in the above quoted paragraph of Lloyds excess policy.

Let us now carry our analysis of the pertinent clause further.

In construing the language of a contract, the proper grammatical meaning of all words and phrases must be the guiding rule, unless a different intent is clearly disclosed.

Upon examination we find the following:

The words "Policy", "Assured", "Discovery Clause", and "Primary Policy are all capitalized. Why? Because they are proper nouns.

Foerster and Steadman's "Sentences and Thinking" says of capital letters:

"The two fundamental uses of capitals are

(1) to mark a new unit of thought, and (2) to designate a word as proper and not common." "Capitalize all proper nouns or adjectives. Names of persons or the equivalents of such names; names of races, languages, religious, political, social, legislative, educational, or military organizations; of wars, historical epochs or movements; of the days of the week, of the months, of holidays—are capitalized because they refer to specific, individual persons or things."

"It is often difficult to determine whether a given noun is proper or common. But the context will, in most cases, enable one to determine whether the reference is to a particular person or thing, or to any one of a class of persons or things." [141]

New Standard Dictionary, under "Capital Letter", says:

"A letter larger and more conspicuous than others of the same font and of a different form, as the 'A' in 'Africa'; used to distinguish proper names, for the beginning of paragraphs or lines of poetry, and for titles and display."

Now, it will be noted that each capital letter used in the clause under examination, is properly and advisedly used.

"Policy" refers to a particular policy. "Assured" refers to the particular assured. "Primary Policy" refers to the particular primary policy. Then what does "Discovery Clause" refer to? Does it not refer

to a particular thing,—a thing which can be definitely and specifically identified,—a thing expressly existing? Is it not clear that this term referred to something to be expressed in the primary policy, and not to something which might be implied? And if that thing to which it expressly referred, was nonexistent, then obviously the exception noted becomes inoperative, and the main clause becomes operative and effectual.

Next let us consider the other language contained in the paragraph under scrutiny.

Take the phrase "a period equal to that provided by the Discovery Clause".

"Provided" is defined in Webster as "furnished", and it is so defined in King vs. State, 30 Tex, Civ. A. 320, 70 S. W. 1019, 1921.

In People vs. Joyce, 246 Ill. 124, 92 N. E. 607, it is defined as "to fix; to establish as a previous condition; to determine; to settle."

"Equal", as used in the Statute, is defined by Webster, and in a number of decisions, as being in just proportion.

In Fechteler vs. Palm, 133 F. 462, at 471, it is defined [142] as "measured or estimated by".

Now, unless a clause existed, then a period could not be furnished or fixed by it. These words refer to expressed things—not to those which are implied, —and therefore the full context of the paragraph under scrutiny shows that the parties contracted to have the exception effectual only in the event a Dis-

covery Clause was expressed in the primary policy.

We submit that under the decisions above quoted, and particularly Cal. Ref. Co. vs. Prod. Ref. Co., 25 Cal. App. (2d) 104, (76 Pac. (2d) 533), the Court is without power to imply the existence of something which the parties contracted would only be effective in the event that period was expressed, but if the Court had such power, what implied provision could it insert? Could it provide a Discovery Clause? If so, what would it provide? One month, three months, six months, one year, two years, or what? In any event the implication of any term by the Court would have the effect not of construing the contract, but of making a new contract for the parties.

Finally, we believe that the paragraph under scrutiny in the instant case is analogous to a constitutional provision which is not self-executing, but requires an enabling act to give it force and effect. Obviously, the exception does not ex proprio vigore enlarge the discovery period. That period would be enlarged only in case the primary policy provided a discovery period. Provided how? By construction? No. By general terms of the primary policy? No. By limitation of three years? No. By the Statute of Limitations? No. It would have to be provided, or as we have said, "furnished", by an express Discovery Clause contained in the primary policy, and since none existed, then the provisions of the exception never became operative or effectual, and the

provisions of the main clause remained and continued controlling, and the discovery would have to be made during the currency of the excess policy. [143]

We mention one other feature purely out of an abundance of precaution, for it may be contended that the reference to a Discovery Clause in effect referred merely to the Statute of Limitations. If such a contention is made, we submit it is supported by neither reason nor authority. It has been definitely held that the Statute of Limitation is not the same thing as, but is separate and distinct from, Discovery Clauses.

American Employers' Ins. Co. vs. Roundup Coal Mining Co., 73 F. (2d) 592;

Ballard vs. U. S. Fidelity and Guaranty Co., 150 Ky. 236, 150 S. W. 1.

But even aside from these decisions, it is obvious that this paragraph does not state, either expressly or impliedly, literally or in effect, that they shall have a discovery period "as provided by law", or in accordance with the Statute of Limitations. It says only that they shall have such period as is provided in the Discovery Clause of the primary policy.

We respectfully submit that the period of discovery for the losses of plaintiff under Lloyds express policy, ceased at the expiration of that policy, to-wit, November 1, 1937, and that since the discovery of the loss was not made during its currency, the plaintiff is only entitled to judgment against the U. S. F.

& G. under its continuity or superseded suretyship rider.

Respectfully submitted,
CHAS. E. R. FULCHER
Attorney for Defendants, Underwriting Members of Lloyd's in Lloyd's Policy Number 52342, and Stanley Graham Beer, individually and as representative of the Underwriting Members of Lloyd's in Lloyd's Policy Number 52342 [144]

Received copy of the within Memorandum of Facts, this 8th day of April, 1942.

FARRAND & FARRAND,
By STEPHEN M. FARRAND
(Attorneys for Plaintiff)
MILLS & WOOD,
By EDWARD C. MILLS
N. P.
(Attorneys for Defendant, United States Fidelity and Guaranty Company)

[Endorsed]: Filed Apr. 10, 1942. [145]

At a stated term, to wit: The February Term, A. D. 1942, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los An-

geles on Wednesday, the 15th day of April, in the year of our Lord one thousand nine hundred and forty-two.

Present:

The Honorable Harry A. Hollzer, District Judge.

No. 1447-H Civil

[Title of Cause.]

This cause coming on for trial; Ross C. Fisher, Esq., appearing as counsel for the plaintiff; Chas. E. R. Fulcher, Esq., appearing as counsel for Underwriting Members, etc., and Stanley Graham Beer, etc., Edw. C. Mills, Esq., appearing as counsel for U. S. Fidelity & Guaranty Co., and John Q. Bybee, Court Reporter, being present and reporting the proceedings; at 10:15 A.M. both sides answering ready.

Counsel stipulate re various facts including the fact that there is due and owing to plaintiff $22,-019.22 less $1,000.00 heretofore paid by U. S. Fidelity & Guaranty Co., and the issue before the Court is the question as to whether defendant U. S. Fidelity & Guaranty Co., or defendant Underwriting Members of Lloyd's, etc., is liable for the aforementioned amount and Attorney Fisher makes a statement re plaintiff's position.

At 11 A.M. court recesses. At 11:10 A.M. court reconvenes.

Attorney Fulcher argues to the Court on behalf of defendants Underwriting Members of Lloyd's, etc., and Stanley Graham Beer, etc.

At 12.05 P.M. court recesses to 2 P.M. At 2.05 P.M. court reconvenes.

Attorney Fulcher resumes argument on behalf of his clients. Attorney Mills argues on behalf of defendant U. S. Fidelity & Guaranty Co. Attorney Fulcher argues further.

At 3.40 P.M. court recesses. At 3.50 P.M. court reconvenes. Attorney Fulcher argues further. Attorney Mills makes a statement. The Court suggests that a transcript be filed on certain parts of the argument.

It is ordered that the cause be, and it hereby is, continued to May 20, 1942, at 10 A.M. for further trial.

At 4:30 P.M. court adjourns. **[146]**

At a stated term, to wit: The February Term, A.D. 1942, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles, on Monday, the 20th day of April, in the year of our Lord one thousand nine hundred and forty-two.

Present:

The Honorable Harry A. Hollzer, District Judge.

No. 1447-H Civil

[Title of Cause.]

This cause coming on for further trial; Ross C. Fisher, Esq., appearing as counsel for the plaintiff;

Chas. E. R. Fulcher, Esq., appearing as counsel for Underwriting Members, etc., and Stanley Graham Beer, etc., Edw. C. Mills, Esq., appearing as counsel for U. S. Fidelity & Guaranty Co., John Q. Bybee, Court Reporter, being present and reporting the proceedings:

It is ordered that a written stipulation be filed to cover oral stipulations heretofore made.

Attorney Mills argues in behalf of his client.

Pursuant to stipulation Findings are waived, and it is ordered that the cause be, and it hereby is, continued to April 27, 1942, at 10 A.M. for submission. [147]

[Title of District Court and Cause.]

SUPPLEMENTAL STIPULATION AS TO CERTAIN FACTS

It Is Hereby Stipulated by and between plaintiff and defendants, Underwriting Members of Lloyd's in Lloyd's Policy No. 54342 and Stanley Graham Beer, individually, and as representative of the Underwriting Members of Lloyd's in Lloyd's Policy No. 54342, and by and between plaintiff and defendant United States Fidelity and Guaranty Company, a corporation, as follows:

1. (a) Whenever in this stipulation reference is made to "Primary Bond", it shall be deemed to refer to that certain bond issued by defendant

United States Fidelity and Guaranty Company to plaintiff under date of October 23, 1912, being Bond No. 603-12, a copy of which bond is attached to plaintiff's complaint as Exhibit "A". [148]

(d) Whenever in this stipulation reference is made to "1937 bond", it shall be deemed to refer to that certain excess commercial blanket bond issued by defendant United States Fidelity and Guaranty Company to plaintiff, being bond No. 02-308-37 as amended and modified by certain written riders attached thereto, a copy of which bond and riders is attached to plaintiff's complaint as Exhibit "D". Whenever in this stiplation reference is made to "1938 bond", it shall be deemed to refer to that certain excess commercial blanket bond issued by defendant United States Fidelity and Guaranty Company to plaintiff, being bond No. 14815-02-313-38 as amended and modified by certain written riders attached thereto, a copy of which bond and riders is attached to plaintiff's complaint as amended as Exhibit "E". Said 1937 bond and said 1938 bond are sometimes herein collectively referred to as "excess bonds".

(c) Whenever in this stipulation reference is made to "Lloyd's", it shall be deemed to refer to defendant Underwriting Members of Lloyd's in Lloyd's Policy No. 54342.

(d) Whenever in this stipulation reference is made to "Lloyd's Excess Policy", it shall be deemed to refer to the Certificate of Insurance and the Policy of Insurance, copies of which are set

forth as Exhibits "B" and "C", respectively, to plaintiff's complaint.

(e) Whenever in this stipulation reference is made to "Audit Report", it shall be deemed to refer to the audit report of Fuller, Eadie & Payne dated October 28, 1940, addressed to plaintiff.

2. This stipulation supplements the Stipulation As To Certain Facts between plaintiff and defendants Lloyd's and Stanley Graham Beer, individually, and as representative of Lloyd's, dated January 6, 1942, filed herein March 20, 1942, and the Stipulation As To Certain Facts between plaintiff and defendant United States Fidelity and Guaranty Company, dated March 19, 1942, filed herein March 20, 1942. [149]

3. These stipulating defendants waive the introduction in evidence at the trial of the audit report of Fuller, Eadie and Payne, dated October 28, 1940, addressed to plaintiff and stipulate that the plaintiff suffered losses due to the defalcations of Floyd E. Jones occurring during the period from May 1, 1937 to and including November 1, 1937, aggregating the sum of $23,019.22. Defendants Lloyd's and Stanley Graham Beer, individually and as representative of Lloyd's, stipulate that if the court should determine that they are liable under Lloyd's excess policy for said loss, then the judgment to be entered by the court in favor of plaintiff and against them, and each of them, on account of the losses sustained by plaintiff as a result of the defalcations of said Floyd E. Jones occurring during

said period from May 1, 1937 to and including November 1, 1937, shall be the sum of $22,019.22, being the full amount of said losses less the sum of $1,000.00 heretofore paid plaintiff by defendant United States Fidelity and Guaranty Company under said primary bond. Defendant United States Fidelity and Guaranty Company stipulates that if the court should determine that it is liable under either said 1937 bond or said 1938 bond for said loss, then the judgment to be entered by the court in favor of plaintiff and against defendant United States Fidelity and Guaranty Company on account of losses sustained by plaintiff as a result of the defalcations of said Floyd E. Jones occurring during said period from May 1, 1937 to and including November 1, 1937, shall be in the sum of $22,019.22, being the full amount of said losses less the sum of $1,000.00 heretofore paid by defendant United States Fidelity and Guaranty Company under said primary bond.

4. Plaintiff's claim against defendants for losses sustained by plaintiff and arising out of the defalcations of said Floyd E. Jones occurring during the period from May 1, 1937 to and including November 1, 1937, shall be limited to said sum of $23,019.22 less the said sum of $1,000.00 heretofore paid on account [150] of said primary bond and plaintiff waives any claim which it might have on account of said losses in excess of said amount.

5. Defendants and each of them stipulate that on July 31, 1940, plaintiff discovered for the first time

that said Floyd E. Jones might not have accounted for all of the moneys received by him on plaintiff's behalf for fruit sold by him. Defendants and each of them further stipulate that plaintiff duly performed all of the conditions on its part to be performed under the primary bond, the Lloyd's excess policy, and under the 1937 and 1938 bond, and accordingly defendants and each of them admit the allegations of paragraph XIII of plaintiff's complaint.

6. On or about November 20, 1940 defendant United States Fidelity and Guaranty Company paid to plaintiff on account of the defalcations of said Floyd E. Jones during the year 1937 between May 1 and November 1, the total sum of $1,000.00 as the maximum amount of coverage as to the said defalcations under the said primary fidelity bond, and accordingly defendants and each of them admit the allegations contained in paragraph XIV of plaintiff's complaint.

7. These stipulating defendants stipulate and agree that plaintiff is entitled to recover for said losses in the amount set forth herein either against defendants Lloyd's and Stanley Graham Beer, individually, and as representative of Lloyd's, or against defendant United States Fidelity and Guaranty Company. Defendants Lloyd's and Stanley Graham Beer, individually, and as representative of Lloyd's, stipulate and agree that in the event the court should hold defendant United States Fidelity and Guaranty Company not to be liable under its

policies of excess insurance or either of them, that they will be liable to plaintiff in the amounts set forth herein, and that judgment may be entered herein in favor of plaintiff against defendants Lloyd's and Stanley Graham Beer, individually, and as repreesntative of Lloyd's, in the said sum of $22,019.22. Similarly defendant United States Fidelity and Guaranty Company stipulates and [151] agrees that in the event the court should hold defendants Lloyd's and Stanley Graham Beer, individually, and as representative of Lloyd's, not to be liable under its policy of excess insurance, that defendant United States Fidelity and Guaranty Company will be liable to plaintiff in the amounts set forth herein and that judgment may be entered herein in favor of plaintiff and against defendant United States Fidelity and Guaranty Company in the said sum of $22,019.22.

8. It is stipulated that it is to be legally inferred that at the time Lloyd's issued its excess policy Lloyd's was familiar with the terms and conditions of the primary bond, and similarly it is stipulated that it is to be legally inferred that at the time defendant United States Fidelity and Guaranty Company issued its 1937 and 1938 bonds and superseded suretyship riders attached thereto it was familiar with the terms and conditions of Lloyd's excess policy and the primary bond.

9. Findings of Fact and Conclusions of Law are hereby waived.

10. This stipulation is not to be construed as in

anywise constituting an admission, stipulation or agreement that these respective stipulating defendants are liable to plaintiff in any sum whatsoever under their respective policies of excess insurance, or otherwise, and that all defenses to such action are hereby expressly reserved except as provided in this stipulation or the stipulations which it supplements or in the pleadings heretofore filed herein.

11. Nothing contained herein shall be construed to prejudice or waive the right of any party hereto to appeal from or prosecute any appropriate proceeding to review any judgment or any part or portion thereof as may be entered herein. [152]

12. This supplemental stipulation as to certain facts together with the prior stipulations as to certain facts referred to in paragraph 2 hereof, constitute a stipulation as to all the facts at issue under the pleadings, and no evidence shall be introduced at the trial.

Dated this 23rd day of April, 1942.

FARRAND & FARRAND
Attorneys for Plaintiff.
CHAS. E. R. FULCHER
Attorneys for Defendant Underwriting Members of Lloyd's in Lloyd's Policy No. 54342 and Stanley Graham Beer, individually, and as representative of the Underwriting Members of Lloyd's in Lloyd's Policy No. 54342.

MILLS & WOOD
By EDWARD C. MILLS
Attorneys for Defendant
United States Fidelity and
Guaranty Company.

[Endorsed]: Filed Apr. 23, 1942. [153]

At a stated term, to wit: The February Term, A. D. 1942 of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday, the 27th day of April, in the year of our Lord one thousand nine hundred and Forty-two.

Present:

The Honorable: Harry A. Hollzer, District Judge.

No. 1447-H Civil

[Title of Cause.]

This cause coming on for submission; Ross C. Fisher, Esq., appearing as counsel for the plaintiff:

It is ordered that the cause stand submitted. [155]

[Title of District Court and Cause.]

OPINION OF THE COURT

Memorandum of Conclusions, Judge Hollzer, July 14, 1942.

It appearing that the facts upon which this cause has been tried are not controverted and that the same have been set forth in a series of stipulations, that is to say, one stipulation entered into under date of January 6, 1942 between plaintiff and the defendant sued herein under the name of Underwriting Members of Lloyd's in Lloyd's Policy No. 52342, an unincorporated association and Stanley Graham Beer, individually and as representative of the Underwriting Members of Lloyd's in Lloyd's Policy Number 52342, said defendants jointly being hereafter referred to as Lloyd's, also another stipulation entered into under date of March 19, 1942 between plaintiff and the co-defendant sued herein under the name of United States Fidelity and Guaranty Company, a corporation, hereinafter referred to as Fidelity Company, and also a third stipulation entered into under date of April 23, 1942, between plaintiff on the one hand and all of the defendants on the other hand, and that for the purpose of this decision only the facts herein recited need be considered. [156]

That during the period extending from a date prior to May 1, 1937 to a date subsequent to November 1, 1937, one Floyd E. Jones was employed as a loose fruit salesman by plaintiff, that throughout said period said Jones was scheduled as an employee

of plaintiff under the bonds hereinafter mentioned, that said bonds were executed in favor of plaintiff, some by defendant Fidelity Company and one by defendant Lloyd's, that copies of said several bonds are attached as exhibits either to the complaint or to the complaint as amended by stipulation, that one of said bonds was executed by Fidelity Company under date of October 23, 1912, the same having been continued in force ever since and being hereinafter referred to as the Primary Bond, that liability under said Primary Bond as to any defalcations of said Jones occurring prior to November 1, 1937 was limited to the sum of $1,000, that another bond was executed by Fidelity Company under date of November 15, 1937, the same being hereinafter referred to as said 1937 bond, that still another bond was executed by Fidelity Company under date of November 7, 1938, the same being hereinafter referred to as said 1938 bond, that likewise Lloyd's under date of November 1, 1936, issued to plaintiff a certain bond in the amount of $25,000, the same being hereinafter referred to as Lloyd's Excess Policy and consisting of the Certificate of Insurance and the Policy of Insurance, copies of which are attached to the complaint as Exhibits B and C, respectively.

That a copy of said Primary Bond, as modified from time to time by signed endorsements appended thereto, is attached to the complaint as Exhibit A, and that by said Primary Bond, as so modified, Fidelity Company guaranteed to pay to plaintiff any and all pecuniary losses of the character involved

herein and suffered during the period involved herein. [157]

That the purpose and effect of Lloyd's Excess Policy were to supplement said Primary Bond by extending the amount of coverage over and above the maximum liability under said Primary Bond to and not exceeding the sum of $25,000, and that said Lloyd's Excess Policy covered the period commencing November 1, 1936 and ending November 1, 1937.

That the purpose and effect of the aforementioned 1937 bond were to insure the fidelity of plaintiff's employees, (including said Jones) scheduled under said Primary Bond in the maximum sum of $25,000 over and above the amount of said Primary Bond in the maximum sum of $25,000 over and above the amount of said Primary Bond, and to cover, among other things, any misconduct of such employees occurring during the period of said Lloyd's Excess Policy, for which a right of recovery against Lloyd's under the latter's policy might be lost because of non-discovery of the defalcation and because of lapse of time.

That the purpose and effect of said 1938 bond were to insure the fidelity of plaintiff's employees (including said Jones), scheduled under said Primary Bond in the maximum sum of $25,000 over and above the amount of said Primary bond, and to cover, among other things, any misconduct of such employees during the period of Lloyd's Excess Policy, for which a right of recovery against Lloyd's under the latter's policy and against Fidelity Company

under its 1937 bond might be lost because of non-discovery of the defalcation and lapse of time.

That losses were sustained by plaintiff as the result of defalcations of said Jones during the period from May 1, 1937 to November 1, 1937, and that these losses were of such a nature as would be covered by said Primary Bond, also by said 1937 bond, also by said 1938 bond, and also by Lloyd's Excess Policy, if the court should determine that Lloyd's [158] is liable for any losses sustained by plaintiff under Lloyd's Excess Policy.

That plaintiff has been paid the sum of $1,000 by Fidelity Company in discharge of the latter's liability under said Primary Bond for the period covered by Lloyd's Excess Policy, and that in addition, plaintiff has been paid by Fidelity Company the further sum of $2,000, the same constituting the balance of Fidelity Company's Liability for losses due to the defalcations of said Jones occurring subsequent to November 1, 1937.

That the total losses suffered by plaintiff as a result of the defalcations of said Jones occurring during the period from May 1, 1937 to and including November 1, 1937, aggregate the sum of $23,019.22, that on July 31, 1940 plaintiff for the first time discovered that said Jones might not have accounted for all of the monies received by him on plaintiff's behalf for fruit sold by him, and that plaintiff has duly performed each and all of the conditions of the several bonds sued upon herein.

That Lloyd's admits that at the time of issuing its

said Excess Policy it was familiar with the terms and conditions of said Primary Bond, and likewise Fidelity Company admits that at the time of issuing its said 1937 bond and its said 1938 bond and the superseded suretyship riders attached thereto it was familiar with the terms and conditions of Lloyd's Excess Policy as well as said Primary Bond.

That Lloyd's Excess Policy contained among other provisions, a certain paragraph numbered 5 therein and reading as follows, to-wit: [159]

> "Warranted Free of All Claim for losses occurring subsequent to the expiry date of this Policy and for losses not discovered during its currency, with the understanding that in event of non-renewal the Assured shall have a period equal to that provided by the Discovery Clause of the aforesaid Primary Bonds (but not exceeding three years) in which to discover losses claimable under this insurance."

That said Lloyd's Excess Policy was not renewed at its expiration date on November 1, 1937, but on said date Fidelity Company issued to plaintiff said 1937 bond which contained, among other provisions the following clauses, to-wit:

> "Whereas, Lloyds issued an Excess Blanket Fidelity Bond (hereinafter called the prior bond), effective the First day of November, 1936, in the amount of Twenty-Five Thousand Dollars ($25,000.00), and in favor of the Employer; and
>
> "Whereas, the prior bond, as of the effective

date of the attached bond, has been terminated or cancelled by notice or agreement, as is evidenced by the issuance and acceptance of the attached bond and this rider;

"Now, Therefore, it is hereby understood and agreed as follows:

"1. That the attached bond shall be construed to cover, subject to its terms, conditions and limitations, any loss or losses under the prior bond which shall be discovered after the expiration of the time limited therein for the [160] discovery of loss thereunder, and before the expiration of the time limited in the attached bond for the discovery of loss thereunder; provided that such loss or losses would have been recoverable under the prior bond had it not been cancelled or terminated; and provided further, that the acts or defaults causing such loss or losses be such as are covered under the attached bond on its effective date."

That preliminary to the execution of its said Excess Policy and under date of November 1, 1936, Lloyd's issued to plaintiff a certain certificate of insurance which contained a recital to the effect that such insurance was issued in the amount of $25,000 over and above Primary Limit of approximately $972,000 on United States Fidelity and Guaranty Company Bond No. 14815-03-62-12 (the same being referred to as said Primary Bonds in Lloyd's Excess Policy).

That the respective defendants have stipulated to

the effect that plaintiff is entitled to recover judgment for said losses in the amount of $22,019.22, that it is say, Lloyd's has stipulated to the effect that if the court should hold its co-defendant not to be liable under any of the policies sued upon herein, then judgment may be entered in favor of plaintiff and against Lloyd's in the amount last stated, and Fidelity Company has stipulated to the effect that in the event the court should hold Lloyd's not to be liable under the latter's Excess Policy, then judgment may be entered in favor of plaintiff and against Fidelity Company in the amount last stated. [161]

It further appearing that Lloyd's contends that it is not liable herein, because the losses here involved were discovered by plaintiff on July 31, 1940, that is to say, were discovered not during the currency of its Excess Policy but after the expiration thereof, also because said Primary Bonds contained no Discovery Clause, hence the right of discovery ceased upon the expiration of its Excess Policy, and therefore the concluding clause of the aforementioned paragraph numbered 5 never became operative or effective and must be treated as surplusage, in other words, that Lloyd's can be held liable under its said Excess Policy only for such losses as were discovered during its currency, and that such limitation or restriction is due to the fact that the Primary Bonds issued by Fidelity Company contained no express Discovery Clause.

It further appearing that Lloyd's also contends

that the purpose of the above quoted Continuity Rider, attached to said 1937 bond issued by Fidelity Company, was to pick up any losses occurring during the currency of said Lloyd's Excess Policy, but not discovered within the time limited in the latter policy for the discovery thereof, and since the time for the discovery of losses under the latter policy was limited to the period of its currency, and since the losses involved herein were not discovered until after the expiration of said period, the Fidelity Company has become liable therefor, and plaintiff is entitled to judgment against it for the amount previously stated.

It further appearing that Fidelity Company contends that the term "Discovery Clause", as used in the aforementioned paragraph numbered 5 in said Lloyd's Excess Policy, [162] was not intended to be and should not be limited to a specific clause in a Primary Bond providing for discovery, but that said term was intended to refer to and does mean merely the period of time in which under such Primary Bond losses must be discovered in order to be recoverable thereunder, and that in the absence of specific limitation there is no definite time limit for discovery under such Primary Bond, that is to say, that the only limitation is the time prescribed by the applicable statute of limitations for commencing suit upon a written instrument," (but not exceeding three years)".

It further appearing that Fidelity Company also contends that since in the instant case there is an

absence of specific limitation fixing a definite time limit for discovery of losses under the applicable Primary Bond the assured (plaintiff) would be entitled to recover under such Primary Bond for losses occurring during its currency and discovered within the period prescribed by the California Statute of Limitations for commencing suit upon a written instrument, "(but not exceeding three years)".

The Court Concludes that in conformity with the fundamental rules of construction, every clause, every phrase, and every distinct provision in the policies sued upon herein should be given meaning and effect; that such meaning must be given, if possible, as will permit the particular policy involved to stand and leave no part useless, or deprived of all sense and meaning; that words should never be considered unnecessary and surplusage, if a reasonable construction can be adopted which will give force to and preserve all of the terms of such policy; that any construction should be avoided which implies that the party drawing the policy was ignorant of the meaning of the [163] language employed, or that he used words in vain, the legal intendment being that each and every word or clause was inserted for some useful and sensible purpose, and that when rightly understood it may have some practical operation.

The Court Further Concludes that Lloyd's issued its said Excess Policy with express and specific reference to the applicable Primary Bond issued by

Fidelity Company, and expressly agreed that because of the non-renewal of its Excess Policy the assured (plaintiff) should have additional time after the expiration thereof, "in which to discover losses claimable under this" Excess Policy, that is to say, additional time equivalent to the time within which plaintiff was allowed to discover losses and recover therefor under the applicable Primary Bond, but not exceeding three years.

The Court Further Concludes that because of the absence of any specific limitation fixing the time for discovery of losses under the applicable "Primary Bond", and in order to give a reasonable and appropriate meaning to the concluding clause of the above quoted Paragraph numbered 5 in said Lloyd's Excess Policy, and in order to avoid giving to such concluding clause a construction which would imply that the party drawing the same was ignorant of the meaning of the language employed, and in order to avoid leaving such concluding clause meaningless and useless, said Paragraph numbered 5 must be construed as entitling plaintiff to recover from defendant Lloyd's for losses occurring during the currency of its said Excess Policy and discovered with three years thereof.

The Court Further Concludes that plaintiff is entitled to judgment in the sum of $22,019.22, from defendant Lloyd's.

[Endorsed]: Filed Jul. 14, 1942. [164]

At a stated term, to wit: The February Term, A. D. 1942, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Tuesday the 14th day of July, in the year of our Lord one thousand nine hundred and Forty-two.

Present:

The Honorable Harry A. Hollzer, District Judge.

No. 1447-H Civil

[Title of Cause.]

For the reasons set forth in the Memorandum of Conclusions this day filed, and it appearing that Findings of Fact and Conclusions of Law have been waived herein, it is ordered that counsel for the plaintiff prepare and submit the form of judgment herein, serving a copy on counsel for the other parties.

At 12.30 P.M. court adjourns. [165]

In the District Court of the United States
Southern District of California
Central Division

Civil No. 1447-H

CALIFORNIA FRUIT GROWERS EXCHANGE, a corporation,

Plaintiff,

v.

UNITED STATES FIDELITY AND GUARANTY COMPANY, a corporation; UNDERWRITING MEMBERS OF LLOYD'S IN LLOYD'S POLICY NUMBER 52342; and STANLEY GRAHAM BEER, individually and as representative of the Underwriting Members of Lloyd's in Lloyd's Policy Number 52342,

Defendants.

JUDGMENT

This action came on regularly for trial on the 15th day of April, 1942, and was tried on April 15, 1942, April 20, 1942 and April 27, 1942, before the court sitting without a jury, the Honorable Harry A. Hollzer, Judge presiding; Messrs. Farrand & Farrand, appearing by Ross C. Fisher, Esq., of said firm, appeared as attorneys for plaintiff, and Messrs. Mills & Woods, appearing by Edward C. Mills, Esq., of said firm appeared as attorneys for defendant, United States Fidelity and Guar-

anty Company, a corporation; Chas. E. R. Fulcher, Esq., appeared as attorney for defendants, Underwriting Members of Lloyd's in Lloyd's Policy Number 52342 and Stanley Graham Beer, individually and as representative of the Underwriting Members [166] of Lloyd's in Lloyd's Policy Number 52342. The facts were stipulated to by written stipulations of facts heretofore filed herein, and the cause having been submitted to the court upon the pleadings herein and said written stipulations, and the court having duly considered the pleadings and stipulations on file herein, and findings of fact and conclusions of law having been waived by said stipulations, and the court having rendered on May 14, 1942, its memorandum decision herein, and the court being fully advised in the premises,

It Is Therefore Ordered, Adjudged and Decreed that plaintiff have judgment against defendants Underwriting Members of Lloyd's in Lloyd's Policy Number 52342 and Stanley Graham Beer, individually and as representative of the Underwriting Members of Lloyd's in Lloyd's Policy Number 52432, for the sum of $22,019.22, and for plaintiff's costs incurred herein, hereby taxed in the sum of $22.14, and for reporter's fees in the sum of $12.40; together with interest on said judgment from the date of this judgment at the rate of seven per cent per annum;

It Is Further Ordered, Adjudged and Decreed that plaintiff take nothing by reason of this action against defendant United States Fidelity and Guar-

anty Company, a corporation; provided, however, that in the event defendants Underwriting Members of Lloyd's in Lloyd's Policy Number 52342 and Stanley Graham Beer, individually and as representative of the Underwriting Members of Lloyd's in Lloyd's Policy Number 52342, or any of them, shall appeal from this judgment and if it shall be finally determined that plaintiff is not entitled to recover from defendants Underwriting Members of Lloyd's in Lloyd's Policy Number 52342 and Stanley Graham Beer, individually and as representative of the Underwriting Members of Lloyd's in Lloyd's Policy Number 52342, or any of them, then plaintiff shall have and recover from defendant United States Fidelity and Guaranty Company, a corporation, the sum of $22,019.22, [167] together with interest thereon from the date of this judgment at the rate of seven per cent per annum, and together with plaintiff's costs herein incurred.

Dated this 31 day of August, 1942.

H. A. HOLLZER

Judge

Approved as to form:

FARRAND & FARRAND
Attorneys for Plaintiff

CHAS. E. R. FULCHER
Attorney for defendants Underwriting Members of Lloyd's in Lloyd's Policy Number 52342 and Stanley Graham Beer, individually and as representative of the Underwriting Members of Lloyd's in Lloyd's Policy Number 52342.

MILLS & WOOD
By EDWARD C. MILLS
Attorneys for defendant United States Fidelity and Guaranty Company, a corporation.

Judgment entered Aug. 31, 1942.
Docketed Aug. 31, 1942.
C. O. Book 11, Page 10.

EDMUND L. SMITH,
Clerk,
By L. WAYNE THOMAS
Deputy.

[Endorsed]: Filed Aug. 31, 1942. [168]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that the defendants, Underwriting Members of Lloyd's in Lloyd's Policy Number 52342; and Stanley Graham Beer, individually and as representative of the Underwriting Members of Lloyd's in Lloyd's Policy Number 52342, do hereby appeal to the United States Circuit Court of Appeals, for the Ninth Circuit, from that certain judgment in favor of the plaintiff, California Fruit Growers Exchange, a corporation, and against the defendants, Underwriting Members of Lloyd's in Lloyd's Policy Number 52342, and Stanley Graham Beer, individually and as representative of the Underwriting Members of Lloyd's in Lloyd's Policy Number 52342, which judgment was entered on August 31, 1942, and from the whole [170] thereof.

Dated this 9th day of September, 1942.

CHAS. E. R. FULCHER

Attorney for defendants, Underwriting Members of Lloyd's in Lloyd's Policy Number 52342; and Stanley Graham Beer, individually and as representative of the Underwriting Members of Lloyd's in Lloyd's Policy Number 52342. [171]

[Endorsed]: Filed Sep. 9, 1942.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages, numbered 1 to 191, inclusive, contain full, true and correct copies of: Complaint; Summons; Motion and Order Amending Complaint; Amendment to Complaint; Answer of United States Fidelity and Guaranty Company; Answer of Underwriting Members of Lloyd's, etc., et al.; Stipulation and Order Amending Complaint; Notice of Filing Stipulation and Order Amending Complaint; Amended Answer of United States Fidelity and Guaranty Company; Answer of Underwriting Members of Lloyd's, etc., et al. to Amendment to Complaint; Stipulations (two) as to Certain Facts; Order entered March 25, 1942; Plaintiff's Memorandum of Facts and Issues of Law; Memorandum of Facts and Issues of Law of Defendant United States Fidelity and Guaranty Company; Memorandum of Facts and Issues of Law of Defendants Underwriting Members of Lloyd's, etc., et al.; Minutes of Proceedings entered April 15, 1942; Minutes of Proceedings entered April 20, 1942; Supplemental Stipulation of Facts; Minutes of Proceedings entered April 27, 1942; Opinion of the Court; Order for Judgment; Judgment; Notice of Appeal; Statement of Points Upon Which Appellants Intend to Rely on Appeal; Stipulation and Order Fixing Supersedeas Bond on Appeal; Super-

sedeas Bond on Appeal; Appellants' Designation of Contents of Record on Appeal; Designation of Additional Contents of Record on Appeal by United States Fidelity and Guaranty Company; Designation of Additional Contents of Record on Appeal by California Fruit Growers Exchange; which documents constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I do further certify that the Clerk's fee for comparing, correcting, typing and certifying the foregoing record amounts to $73.25, which fee has been paid to me by the Appellants.

Witness my hand and the seal of said District Court, this 13th day of October, A. D. 1942.

[Seal] EDMUND L. SMITH,
Clerk
By THEODORE HOCKE
Deputy Clerk.

[Endorsed]: No. 10287. United States Circuit Court of Appeals for the Ninth Circuit. Underwriting Members of Lloyd's in Lloyd's Policy Number 52342, and Stanley Graham Beer, individually and as representative of the Underwriting Members of Lloyd's in Lloyd's Policy Number 52342, Appellants, vs. California Fruit Growers Exchange, a corporation, and United States Fidelity and Guaranty Company, a corporation, Appellees. Transcript of Record. Upon appeal from the District Court of the United States for the Southern District of California, Central Division.

Filed October 14, 1942.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

United States Circuit Court of Appeals
For the Ninth Circuit

No. 10287

CALIFORNIA FRUIT GROWERS EXCHANGE, a corporation,

Plaintiff and Appellee,

vs.

UNITED STATES FIDELITY AND GUARANTY COMPANY, a corporation,

Defendant and Appellee.

UNDERWRITING MEMBERS OF LLOYD'S IN LLOYD'S POLICY NUMBER 52342; and STANLEY GRAHAM BEER, individually and as representative of the Underwriting Members of Lloyd's in Lloyd's Policy Number 52342,

Defendants and Appellants.

STATEMENT OF POINTS UPON WHICH APPELLANTS INTEND TO RELY ON APPEAL.

Come now the defendants and appellants, Underwriting Members of Lloyd's in Lloyd's Policy Number 52342; and Stanley Graham Beer, individually and as representative of the Underwriting Members of Lloyd's in Lloyd's Policy Number 52342, and herewith make their statement of the

points upon which they intend to rely on appeal herein:

(1) The trial Court erred as a matter of law, in giving judgment for the plaintiff and appellee in any sum whatsoever as against these appealing defendants and appellants;

(2) The Trial Court erred in deciding that since the primary bond contained no discovery clause, the plaintiff and appellee had up to, but not exceeding, three (3) years, within which to discover losses occurring during the currency of the excess bond executed by these appealing defendants and appellants;

(3) The Trial Court erred as a matter of law, in its interpretation of the terms and conditions of the bonds written by the respective defendants, and in deciding that these appealing defendants and appellants were liable for plaintiff's and appellee's losses;

(4) The Trial Court erred as a matter of law, in deciding that these appealing defendants and appellants were liable under the bond executed by them, for losses discovered after the expiration date of the bond executed by these appealing defendants and appellants;

(5) The Trial Court erred as a matter of law, in determining that the losses suffered by plaintiff and appellee were not within the terms and conditions of the bonds written by the defendant and appellee, United States Fidelity and Guaranty Com-

pany, or under its superseded suretyship riders attached to said bonds;

(6) The Trial Court erred in deciding that plaintiff's and appellee's losses were discovered within the time provided for the discovery of such losses under the excess bond executed by these appealing defendants and appellants;

(7) The Trial Court erred in the interpretation of the provision of the bond executed by these appealing defendants and appellants, in that it in effect rewrote and read into such bond terms and conditions which were non-existent therein;

(8) Under the terms and conditions of the excess bond executed by these appealing defendants and appellants, plaintiff and appellee was not entitled to recover any sum whatsoever, for the reason that the loss was not discovered within the time provided for in said bond so executed by these appealing defendants and appellants.

Dated this 14th day of October, 1942.

CHAS. E. R. FULCHER,
Attorney for defendants and appellants, Underwriting Members of Lloyd's in Lloyd's Policy Number 52342, and Stanley Graham Beer, individually and as representative of the Underwriting Members of Lloyd's in Lloyd's Policy Number 52342.

Receipt of a copy of the within is hereby acknowledged this 14th day of October, 1942.

FARRAND & FARRAND,
By R. M. C. FISHER,
(Attorneys for Plaintiff and Appellee)

Service of the within and receipt of a copy thereof is hereby admitted this 14th day of October, 1942.

MILLS & WOOD,
By M. H.
(Attorneys for Defendant and Appellee)

[Endorsed]: Filed Oct. 15, 1942.